

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
VIRTUAL HEARING**

CLAIM NO: CV2021-01101

BETWEEN

JOAN CHEE

CLAIMANT

AND

THE AUDITOR GENERAL

DEFENDANT

Before the Honourable Mr. Justice K. Ramcharan

Date of Delivery: 25th July, 2022

Appearances: Mr. Anand Ramlogan SC, Ms. Jayanti Lutchmedial, Ms. Renuka Rambhajan *instructed by* Ms. Alana Rambaran Attorneys-at-Law for the Claimant

Mr. Reginald Armour SC, Mr. Raphael Ajodhia *instructed by* Ms. Kezia Redhead and Ms. Tiffany Kissoon for the Defendant

JUDGEMENT

INTRODUCTION

1. In March, 2019, the Claimant retired from the Port-of-Spain City Corporation. After not receiving an update on the processing of her file for the purpose of gratuity and pension payment, an application dated the 22nd day of December, 2020, pursuant to the Freedom of Information Act (hereinafter “the FOIA”) was submitted.

2. The following were requested:

- a. A copy of the role and function of the office of the Auditor General in relation to gratuity/retirement benefits for public officers at the Port of Spain City Corporation;
- b. a copy of the Policy, Practice, Procedure and Criteria at the office of the Auditor General in relation to the payment of a retired public officer from the Port of Spain City Corporation who was appointed by the Statutory Authorities Service Commission;
- c. what are the steps that must be followed by the office of the Auditor General in relation to the work that must be done by/or at the office of the Auditor General in relation to a retired public officer from the Port of Spain City Corporation relative to the payment of their gratuity/retirement benefit;
- d. what are the steps that have been taken, thus, far in relation to the file of Ms. Joan Chee relative to the payment of her gratuity/retirement benefits;
- e. what are the steps that remain outstanding relative to the payment of her gratuity/retirement benefits in favour of Ms. Joan Chee;
- f. what are the reasons why the outstanding steps have not been taken and what is the timeframe within which they will be completed;
- g. what are the number of outstanding applications to be approved and processed by the office of the Auditor General in relation to retired public officers who have not yet been in receipt of their gratuity/retirement benefits;
- h. kindly identify the State entities in the public sector that are obliged to seek approval from the office of the Auditor General before a retired public officer can be paid their gratuity/retirement benefits;
- i. For each such entity, what are the number of outstanding applications that have been referred to the office of the Auditor General and the date(s) when each such application was referred to the said office for the year 2020 and how many applications for gratuity/retirement benefits by public officers that were referred to the said office for approval were in fact approved;
- j. how many applications which were referred to the office of the Auditor General were refused for each year within the past five (5) years (2015 to 2020)

and how many approvals were in fact granted in respect of applications for gratuity/retirement benefits by the office of the Auditor General; and

- k. to whom does the Auditor General report.
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3. The Defendant provided responses to the above and included that the Auditor General's Department is not a public authority under the FOIA. Reliance was placed on a legal opinion issued by the Solicitor General under the cover of Memorandum dated the 10th day of February, 2003.
 4. On the 9th day of March, 2021, the Claimant issued a pre-action protocol letter challenging the decision and requesting the disclosure of the said legal opinion. On the 16th day of March, 2021, Ms. Anita Mangra, responded with same together with reasons as to why the Auditor General's Department is not a public authority.
 5. By way of Fixed Date Claim Form dated the 22nd day of April, 2021, the Claimant seeks the following reliefs against the Defendant:
 - a. A declaration that the Auditor General's Department is a "Public Authority" within the meaning of and as defined by Section 4 of the Freedom of Information Act Chapter 22:02;
 - b. an order of certiorari to move into the Court and quash the decision of the Auditor General contained in the letter of the Defendant dated the 15th day of January, 2021, that the office of the Auditor General is not a public authority within the meaning and definition of the Freedom of Information Act, Chapter 22:02 and is hence not subject to the provisions of the FOIA;
 - c. costs; and
 - d. such further other orders, directions or writs as the Honourable Court considers just and as the circumstances of this case warrants pursuant to Section 8(1)(d) of the Judicial Review Act, Chapter 7:08.

ISSUES

6. The following issues are for the Court's determination:
 - a. whether the Claimant has locus standi;

- b. whether the issue of the Auditor General being a public authority is mere academic and not suitable for determination; and
- c. whether the Auditor General is a public authority within the meaning of the FOIA.

LEGISLATIVE FRAMEWORK

Freedom of Information Act

3. *(1) The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by—*

(a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorisations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorisations, policies, rules and practices; and

(b) creating a general right of access to information in documentary form 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 authorities.

(2) The provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible, so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

4. *In this Act-*

“public authority” means-

(h) a statutory body, responsibility for which is assigned to a Minister of Government

(k) a body corporate or unincorporated entity-

- (i) in relation to any function which it exercises on behalf of the State;*
- (ii) which is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; or*
- (iii) which is supported directly or indirectly by Government funds and over which the Government is in a position to exercise control*

“responsible Minister”, in relation to a public authority, means—

- (a) the Minister of Government to whom responsibility for the public authority is assigned; or*
- (b) such Minister of Government as the President may, by Order, declare to be the responsible Minister of the public authority for the purposes of this Act;*

5. (1) This Act does not apply to—

- (a) the President;*
- (b) a commission of inquiry issued by the President; or*
- (c) such public authority or function of a public authority as the President may, by Order subject to negative resolution of Parliament, determine.*

(2) For the purposes of this Act—

- (a) in relation to its or his judicial functions, a Court or the holder of a judicial office or other office pertaining to a Court in his capacity as the holder of that office, shall not be regarded as a public authority;*
- (b) a registry or other office of Court Administration, and the staff of such a registry or other office of Court Administration in their capacity as members of that staff in relation to those matters which relate to Court administration, shall be regarded as part of a public authority.*

39 (1) For the removal of doubt, a person aggrieved by a decision of a public authority under this act may apply to the High Court for judicial review of the decision.

(2) Notwithstanding any other law to the contrary, where application for judicial review of a decision of a public authority under this act is made to the High Court, that application shall be heard and determined by a Judge in chambers, unless the Court, with the consent of the parties, directs otherwise.

(3) In this section, "decision of a public authority" includes the failure of a public authority to comply with section 15 or 16 (1).

Constitution of the Republic of Trinidad and Tobago

116. (1) There shall be an Auditor General for Trinidad and Tobago, whose office shall be a public office.

(2) The public accounts of Trinidad and Tobago and of all officers, Courts and authorities of Trinidad and Tobago shall be audited and reported on annually by the Auditor General, and for that purpose the Auditor General or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.

(3) The Auditor General is hereby empowered to carry out audits of the accounts, balance sheets and other financial statements of all enterprises that are owned or controlled by or on behalf of the State.

(4) The Auditor General shall submit his reports annually to the Speaker, the President of the Senate and the Minister of Finance.

(5) The President of the Senate and the Speaker shall cause the report to be laid before the Senate and the House of Representatives, respectively, at the next sitting of the Senate and the House of Representatives after the receipt thereof, respectively.

(6) In the exercise of his functions under this Constitution the Auditor General shall not be subject to the direction or control of any other person or authority.

117. (1) The Auditor General shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition and shall hold office in accordance with section 136.

(2) Where the office of Auditor General is vacant or the holder of the office is for any reason unable to perform the functions of his office the President after consultation with the Prime Minister and the Leader of the Opposition may appoint a person to act in the office, and any person so appointed shall, subject to the provisions of subsection (4) continue to act until his appointment is revoked by the President, after consultation with the Prime Minister and the Leader of the Opposition.

(3) Before entering upon the duties of his office the Auditor General shall take and subscribe the oath of office before the President or a person appointed by the President for the purpose.

(4) Nothing done by the Auditor General shall be invalid by reason only that he has attained the age at which he is required under section 136 to vacate his office.

(5) The Auditor General shall be provided with a staff adequate for the efficient discharge of his functions.

(6) The staff of the Auditor General shall be public officers appointed in accordance with section 121(8).

CLAIMANT'S SUBMISSIONS

7. In oral submissions on the issue of whether the matter should be dealt with as an interpretation summons, Counsel submits that in **Carmel Smith v Statutory Authority Service Commission Civil Appeal No. 29 of 2008** the point was taken that the Judge ought not to have given an interpretation in a claim for judicial review as he was of the view that the Auditor General was a mandatory party and that was a claim that started off as a judicial review. Aboud J as he then was ruled against that and stated that it is the entity itself that has given the particular interpretation and that is really meant to be a party. As a result he had no difficulty in granting the declaration that

Counsel for the Defendant in that matter had sought with respect to the correct interpretation.

8. Counsel for the Claimant submits that the Defendant is a public authority as it is exercising its functions on behalf of the State and it is a statutory body for which responsibility is assigned to the Minister of Finance. It also falls under a definition of public authority under Section 4 (k) of the FOIA.
9. As the Auditor General is established in the Constitution for the purpose enabling the State to carry out responsibilities to the public by regulating and monitoring the expenditure and use of public funds, it is without a doubt a public function. The State has a responsibility for managing the finances of the country and to ensure it is done with transparency and accountability. This is a responsibility to the public which is served by the Auditor General. The State is entitled to regulate and monitor the financial expenditure of all ministries and state enterprises and has done so by enacting legislation: the Exchequer and Audit Act. The functions and duties outlined in this Act are those exercised by the Auditor General on behalf of the State.
10. Counsel for the Claimant heavily emphasized on the aim, objective and purpose of the FOIA contained in Section 3 which provides for Parliament's interest to create a right of access to information to the public which the Court not ought to interfere with or misconstrue. Further, when interpreting provisions under the Act, a purposive approach must be adopted. Counsel also refers to Section 5 (1) of the Act which does not list the Auditor General as one to which is exempted.
11. In oral submissions Counsel submits that the starting point is that the FOIA creates exemptions insofar as certain offices are exempt or certain function are exempt, what is not expressly exempt then by default you fall into the net. Further, the Auditor General does not claim that it has received an exemption under the Act. As seen in the letter dated the 16th day of March, 2021, *"Consequently, as the AGD is not a public authority for the purposes of the Act, it does not need to obtain an Exemption Order under section 5(1)(c) of the Act. It naturally follows that a prerequisite to any request*

for exemption is that the applicant body must be included among the categories of bodies which are subject to the Act”.

12. Counsel referred to the Constitutional provisions which touch and concern establishment of the role and function of the Auditor General as well as Section 119 of the Constitution which provides:

119. (4) The Public Accounts Committee shall consider and report to the House of Representatives on—

(a) appropriation accounts of moneys expended out of sums granted by Parliament to meet the public expenditure of Trinidad and Tobago;

(b) such other accounts as may be referred to the Committee by the House of Representatives or as are authorised or required to be considered by the committee under any other enactment; and

(c) the report of the Auditor General on any such accounts.

(8) The Public Accounts (Enterprises) Committee shall consider and report to the House of Representatives on—

(a) the audited accounts, balance sheets and other financial statements of all enterprises that are owned or controlled by or on behalf of the State; and

(b) the Auditor General’s report on any such accounts, balance sheets and other financial statements.

13. Reference was also made to certain provisions of the **Exchequer and Audit Act, Chapter 69:01** namely, Sections 9, 10, 24, 25 and 31 which further, explore the duties of the Auditor General to be discussed later on.

14. If the Auditor General is exercising public law functions or if the exercise of its functions have public law consequences then that may be sufficient to bring the body within the reach of judicial review. Counsel relies on Tunapuna/Piarco Regional Corporation HCA No. 1066 of 199, Mercury Ltd v Electricity Corporation of New Zealand [1994] 1 WLR 521, R v Panel on Take-overs and Mergers ex parte Datafin PLC and Another (Norton opax PLC and Another Intervening) [1987] 1 All ER 564 where it was stated:

“In determining whether the decisions of a particular body were subject to judicial review, the Court was not confined to considering the source of that body’s powers and duties but could also look to their nature. Accordingly, if the duty imposed on a body, whether expressly or by implication, was a public duty and the body was exercising public law functions the Court had jurisdiction to entertain an application for judicial review of that body’s decisions. Having regard to the wide-ranging nature and importance of the matters covered by the City Code on Take-overs and Mergers and to the public consequence of non-compliance with the code, the Panel on Take-overs and Mergers was performing a public duty when prescribing and administering a code and its rules and was subject to public law remedies. Accordingly an application for judicial review of its decisions would lie in an appropriate case”.

15. In Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank and Another [2003] UKHL 37 the Court noted:

“Comfortably with this purpose, the phrase ‘a public authority’ in section 6 (1) is essentially a reference to a body whose nature is governmental in a broad sense of that expression... Behind the instinctive classification of these organizations as bodies whose nature is governmental lie factors such as the possession of special powers, democratic accountability, public funding in whole or in part, an obligation to act only in the public interest and a statutory constitution...”

“12. What, then, is the touchstone to be used in deciding whether a function is public for this purpose? Clearly there is no single test of universal application.

There cannot be, given the diverse nature of governmental functions and the variety of means by which these functions are discharged today. Factors to be taken into account include the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory powers, or is taking the place of central Government or local authorities, or is providing a public service”.

16. Further, in **Attorney General of Trinidad and Tobago v Carmel Smith (2009) UKPC 50** the Court opined:

“In the Constitution the expression “the State” is not defined (other than by reference to its geographical extent in section 1 (2). Nor is the expression “civil proceedings” defined; in particular, there is no restrictive definition such as is found in the State Liability and Proceedings Act (para 12 below).

9. There are some definition provisions in the Constitution that may be relevant, although they were not relied on in Counsel’s submissions. In section 3 (1) “public office” and “public officer” are defined by reference (directly or indirectly) to the public service, which is defined, subject to subsections (4) and (5), as service in a civil capacity of the Government of Trinidad and Tobago (or of the Tobago House of Assembly), “Service Commission” means the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission and the Teaching Service Commission. Section 3 (4) provides that a person shall not be considered to hold an office in public service by reason only that

“(b) he holds the office of-“

(iii) Ombudsman or member of the Integrity Commission or member of any other Commission established by this Constitution.

(v) Member of any board, commission, committee or similar body whether incorporated or not established by any enactment”.

17. In **Bernard Mohamdally v The Medical Board of Trinidad and Tobago and the Minister of Health CV 2007-01082** the Medical Board refused to take action on a complaint lodged. The Medical Board stated that it is not a public authority subject to the FOIA in response to an application made under the Act. It was submitted that the board is privately financed, comprising private individuals and it a self-regulated independent body. At paragraph 14 the Court rejected the grounds and held that it was in fact a public authority:

14. The test propounded in Chandresh Sharma v The Integrity Commission differs from the Yukon Test in two ways:

Seen through the interpretative lens of s. 3 the Court adopts a permissive rather than restrictive approach to the interpretation of the both the Freedom of Information Act and the constituting legislation. “State” at s.4 K (i) interpreted liberally means the “people of Trinidad and Tobago rather than the Government of Trinidad and Tobago”.

Secondly, independence is not seen as antithetical to the status of a public authority. In fact according to Justice Jamadar, the attribute of the independence is enhanced by accountability which is required by Freedom of Information Act.

Dean Armorer J (as she then was) stated at paragraph 16, “Moreover, the Council is financially independent of Government... The factor of independence does not however preclude the Medical Board from being a public authority”. Counsel also relies on paragraph 2 where it was stated, “... in my opinion the ‘independent body’ argument is not a proper basis for interpreting ‘public authority’ in the restrictive sense suggested by the Respondent. There is nothing inconsistent with an entity being independent and that entity being subject to the FOIA... true independence is facilitated by accountability and not undermined by it- demonstrated by the fact that, among others, the Service Commissions and the Court administration are subject to the FOIA”.

18. Counsel relies on the case of **Vijay Singh v The Ombudsman CV 2016-01485/CA 089 of 2017** for the proposition that even an academic case can be ventilated in the public interest. In that case the Court of Appeal made the order declaring that the Ombudsman is a “Public Authority” within the meaning of and as defined by Section 4 of the FOIA and an order to quash the decision that the Office of the Ombudsman is not a public authority.

19. Counsel submits that the functions of the Auditor General are being carried out on behalf of the Government. In **Chandresh Sharma v The Integrity Commission HCA No CV S 2005 of 2004** Jamadar J (as he then was) states, *“In my opinion, given the object and intention of the FOIA and the interpretative lens prescribed by it and given the specific non-applications and exemptions also specifically provided for by it, the correct approach to determining what is a public authority for the purposes of the FOIA is a permissive and not a restrictive one”*.

Section 4 (k) of the FOIA, *“A body corporate or unincorporated entity in relation to any function which is exercises on behalf of the State”* was also considered. The Court found that the function of the Integrity Commission, the receipt of declarations and statements of registrable interests is being carried out on behalf of and for the benefit of the people of Trinidad and Tobago. It was a public authority under the Act and the failure to have a responsible Minister to whom a request is to be made for an official document did not prevent one being made to the Commission.

20. The Auditor General is subject to some level of control by the State through the Minister of Finance. Section 45 (1) of the **Exchequer and Audit Act** provides, *“The Minister may make Regulations (to be called Financial Regulations) as may appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Act”*. It also reports to the Speaker of the House of Representatives, the President of the Senate and the Minister of Finance in accordance with the requirements of Section 116 (4) of the Constitution.

21. Reference was made to **Section 9 of the Exchequer and Audit Act** which gives authority to the Minister to direct the Auditor General to re-examine vouchers and to perform specific duties. Section 9 (3) provides, *“Notwithstanding the provisions of subsections (1) and (2) the Auditor General may, after satisfying himself that the vouchers have been examined and certified as correct by the accounting department, in his discretion and having regard to the character of the departmental examination, in any particular case admit the sums so certified in support of the charges to which they relate without further examination; **but if the Minister desires the vouchers or any of them to be examined in greater detail the Auditor General shall take action accordingly**”*. Section 9 (5) provides, *“If the Auditor General is required by the Minister to ascertain whether any expenditure included in any appropriation account is supported by the authority of the Treasury, he shall examine that expenditure with that object and shall report to the Minister any expenditure which appears upon the examination to have been incurred without the authority and any such unauthorised expenditure shall, unless sanctioned by the Minister, be regarded as not being properly chargeable to a grant”*.
22. With respect to the law on cases involving the resolution of academic issues Counsel relies on **R v Secretary of State for the Home Department ex parte Salem [1991] 1 AC 450 at pp 456-457** cited with approval in **Florence Bobb and Girlie Moses v Patrick Manning Civ Appeal No 97 of 2002** where Lord Slynn states, *“The discretion to hear disputes, even in the area of public law, must however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and when a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future”*. Further, the case of **R v Oxfordshire County Council Ex Parte P [1996] ELR 153, 157 B-D** also, confirms that an issue can be resolved when it is in the public’s interest regardless of whether the Claimant has suffered prejudice.

DEFENDANT'S SUBMISSIONS

23. In oral submissions Counsel made three (3) preliminary points:

- (1) there is no evidence of any other public servants having difficulty accessing their gratuity or pension benefits. The Claimant has been paid;
- (2) Counsel for the Claimant had submitted that the Defendant had acted unreasonably and in breach of the pre-action protocols by failing to respond during the requested period. However, the response was issued on the 16th day of March, 2021, which was disclosed by the Claimant; and
- (3) in order to be deemed a public authority you have to fall within one of the definitions of public authority as per the sections of the FOIA.

24. With respect to the substantive issues, firstly, Counsel submits that the Claimant has no locus standi to apply for judicial review under Section 39 of the FOIA as she is not aggrieved. Secondly, the issues are academic and serve no practical purpose. Thirdly, the Claimant cannot show that the Auditor General falls within any of the definitions of Section 4 (k) (i) – (iii) or Section 4 (h) as the case may be, due to the express constitutional provision of Section 116(6).

25. The FOIA does not afford locus standi to someone who was provided with the requested information. Section 39 of the FOIA ousts the Claimant from any kind of relief before this Court.

26. In **Regina (Wylde and others) v Waverley Borough Council [2017] PTSR 1245** the Court states, that the question of sufficiency of interest may be taken at the leave stage and most cases that will be the course that is traditionally followed. But it is not a hard and fast rule. There are times when the question of sufficiency of interest are taken together with the legal and factual context. At paragraph 2 the Court states, *"This is an unusual case in the sense that standing is being considered, at the behest of the parties, after permission has been granted. In R v Inland Revenue Comrs, Ex p National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 the*

House of Lords concluded that the question of whether or not there was a sufficient interest so as to establish standing had to be considered together with and alongside the legal context of the application". Lord Wilberforce observed, at p 630CE:

"There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application: then it would be quite correct at the threshold to refuse him leave to apply. The right to do so is an important safeguard against the Courts being flooded and public bodies harassed by irresponsible applications. But in other cases this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest cannot, in such cases, be considered in the abstract, or as an isolated point: it must be taken together with the legal and factual context. The rule requires sufficient interest in the matter to which the application relates. This, in the present case, necessarily involves the whole question of the duties of the Inland Revenue and the breaches or failure of those duties of which the respondents complain. (Original emphasis.)"

27. The issue is whether a person who has received the requested information can still be considered a person aggrieved. Reference was made to the case of **Merlin Samlalsingh v The Ministry of Planning, Housing and the Environment CV 2009-03711.**
28. Counsel for the Defendant submits that the issue is academic in nature. The general disposition is not to treat with it. Counsel submits that as the Claimant has received information she sought there is no practical purpose to be served in the continuation of proceedings. In **R (on the application of Heathrow Hub Ltd and another) v The Secretary of State for Transport and others [2020] EWCA Civ 213** where at paragraph 208 the Court stated:

*“It is well-established that Courts should not opine on academic or hypothetical issues in public law cases other than in exceptional circumstances where there is good reason in the public interest for doing so. As Lord Slynn of Hadley said in his classic statement in R v Secretary of State for the Home Department ex parte Salem [1999] 1 AC 450 (at 456): “... I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to questions of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House, there is no longer a list to be decided which will directly affect the rights and obligations of the parties inter se ... **The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is good reason in the public interest for doing so as for example (but only by way of example) where a discrete point of statutory construction which does not involve detailed consideration of the facts, and where large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.**”*

29. Counsel for the Defendant also referred to the case of Ex parte Salem which was applied in Florence Bobb (supra) and another v Patrick Manning CVA No. 97 of 2002 where add paragraphs 29-33 Sharma CJ stated:

“Although the matters raised are of great public importance, they are all academic at this point. No determination should be made “in the air”.

[29] Counsel for the appellant has submitted that the legality of Manning’s action in retaining office notwithstanding his inability to command the support of the majority, is a justiciable issue as it raises an important constitutional question involving the lawfulness of Government. He urged this Court to determine the issues to provide clarification of the law and to establish guidelines which would assist in the future exercises of public power in similar circumstances. He contended that the “unusual facts of this case provide a good basis for the matter to be determined by the Courts as a general principle.”

[30] I do not dispute the existence of the Court's discretion to grant declaratory relief in academic and hypothetical matters where a claimant has little direct interest in the matter but which is of great public importance.

[31] It is imperative however, that this discretion be exercised with caution. Indiscriminate and unjustified exercise of this discretion can lead to grave injustice. Lord Sterndale M.R. recognised this in Gray v. Spyer when he stated: "I agree that claims for declaration should be carefully watched. Properly used, they are very useful; improperly used, they almost amount to a nuisance."

[32] Judicial restraint is advised in issues of this nature- Lord Slynn made this clear in R. v. Secretary of State for the Home Department, ex. p. Salem: "The discretion to hear disputes, even in areas of public law, must...be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example...when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future".

[33] Whilst these matters concern the legitimacy of Government, there is no real need for this Court to grant a declaration in vacuo, there being no actual incident of illegal retention of power as general elections were called before October 31st 2002. This Court would hesitate to decide questions about events which might never occur. Counsel for the appellants conceded that the facts of this case are "unusual". This affirms my point that any declaration on such facts would be of limited utility in the future." [emphasis supplied; footnotes omitted]

30. In **Balram Singh v Public Services Commission [2014] UKPC 26** at paragraph 16 of the Lord Carnwath stated: *"The Board cannot leave the case without expressing concern at the time and expense which must have been incurred, both by the appellant and the respondent Commission (not to speak of Court resources), in pursuing this appeal to*

this level. Even if it had been successful it would have achieved no substantive benefit other than possibly a declaration as to the legality of decisions made almost a decade ago. However it is not the practice of the Board to grant declarations of law in the abstract or for no practical purpose. There is no information as to the motives of the appellant in continuing to pursue the proceedings after December 2007 when he achieved what was presumably his primary aim. It is said on his behalf that there is a public interest in ensuring the lawful administration of the Regulations. In general of course that is so. But there is no evidence that this aspect of the Regulations has given rise to more general problems, nor of support for the appellant from any union or other representative body. In such circumstances it should not be assumed that even a successful appellant will be entitled to a bare declaration unless it can be shown to have some practical purpose for him or others, nor that he will necessarily be entitled to an order for costs."

31. On the issue of whether the Auditor General is a public authority counsel referred to Section 4 (k) of the FOIA and **Chandresh Sharma v The Integrity Commission HCS 2005/2004** where at page 6 the Court stated:

*"In my opinion, given the object and intention of the FOIA and the interpretative lens prescribed by it, and given the specific non-applications and exemptions also specifically provided for by it, the correct approach to determining what is a public authority for the purposes of the FOIA is a permissive and not a restrictive one. Thus, in my opinion (k)(i) is intended to stand on its own unrestricted by (j) in determining the meaning of 'public authority' in Section 4 of the FOIA. And I so hold. 2021-11-19 12:07:34. In my opinion the 'independent body' argument is not a proper basis for interpreting 'public authority' in the restrictive sense suggested by the Respondent. **There is nothing inconsistent with an entity being independent and that entity being subject to the FOIA. Indeed, in my opinion, true independence is facilitated by accountability and not undermined by it** - demonstrated by the fact that, among others, the Service Commissions and the Court administration are subject to the FOIA."*

32. When determining the intention of Parliament, the Court must apply a purposive interpretation. However, whilst doing so it must be mindful not to engage in judicial law making. In Cellular Planet Limited v Minister of Public Utilities and Telecommunications Services of Trinidad and Tobago CV 2013-02624:

65. The Privy Council allowed the appeal and found that there was an obvious and particular error which had occurred and it was permissible and necessary to insert into the PSCA a provision equivalent to Section 5(1)(c)(ii) of the WCA. Sir David Lloyd Jones, expressing the opinion of the Board, stated as follows:

*“14. The circumstances in which it is open to the Courts in interpreting legislation to correct obvious drafting errors are strictly confined, not least because the role of the Courts must be limited to interpreting the statute and must not trespass into legislating. Nevertheless, in appropriate circumstances it is open to the Courts to read words into a statute in order to correct an error. The applicable principles were stated by Lord Nicholls in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586 as follow: **“It has long been established that the role of the Courts in construing legislation is not confined to resolving ambiguities in statutory language. The Court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the Court will add words, or omit words or substitute words.** Some notable instances are given in Professor Sir Rupert Cross's admirable opuscul, *Statutory Interpretation*, 3rd ed (1995), pp 93–105. He comments, at p 103: **‘In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role.’** This power is confined to plain cases of drafting mistakes. The Courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and*

*enacted by the legislature. So the Courts exercise considerable caution before adding or omitting or substituting words. **Before interpreting a statute in this way the Court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed.** The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation: see Lord Diplock in *Jones v Wrotham Park Settled Estates* [1980] AC 74, 105-106.” (at p 592 E-H)*

*15. In following this approach the Court will not simply mechanically apply these principles. Often the nature of the mistake, the extent of rewriting which would be required and other considerations relating to the particular context will have an important bearing on whether such a process of rectification by interpretation is legitimate. Lord Nicholls expressed this as follows: “Sometimes, even when these conditions are met, the Court may find itself inhibited from interpreting the statutory provision in accordance with what it is satisfied was the underlying intention of Parliament. The alteration in language may be too far-reaching. In *Western Bank Ltd v Schindler* [1977] Ch 1, 18, Scarman LJ observed that the insertion must not be too big, or too much at variance with the language used by the legislature. Or the subject matter may call for a strict interpretation of the statutory language, as in penal legislation.” (at pp 592 H – 593A).” [emphasis mine].*

33. Section 116(6) of the Constitution was enacted to insulate the office of the Auditor General. There is no similar provision to Section 116(6) contained in the Constitution in relation to the Integrity Commission, the Ombudsman and the Medical Board. As

such it immediately takes you outside of **Sharma v Integrity Commission (supra)** and **Bernard Mohamdally (supra)**. When read together with Section 116(2) of the Constitution it is clear that the intention of the framers of the Constitution was to permit the Auditor General to act and exercise its functions with insularity from everyone including the state and members of the public. The oversight function of the public is executed by its elective representative before the Parliament.

34. In relation to Section 4(k)(iii) Counsel has accepted that it is directly supported by Government funds. However, this part is conjunctive as it says “and over which the Government is in a position to exercise control”. The body funded must also be one which is in a position to exercise control. As the Government can exercise control over the Defendant, it cannot be a public authority by virtue of Section 4(k)(iii). Section 116(6) of the Constitution takes this immediately out of play.

35. In relation to the meaning of “on behalf of” Counsel refers to the Solicitor General’s opinion which states that the phrase connotes agency which does not exist between the Defendant and the Government. If “the State” is interpreted as the people of Trinidad and Tobago which is how Jamadar JA saw it in Chandresh Sharma (supra) then the question becomes nuanced. Is he acting on behalf of the people of Trinidad and Tobago. Again Section 116(6) provides that it is not acting on behalf of anybody.

CLAIMANT’S SUBMISSIONS IN REPLY

36. Counsel submits that the Claimant is aggrieved as the Defendant issued in its response that it is not a public authority. The list of circumstances under which a person can be considered to be aggrieved is contained in **Merlin Samlalsingh (supra)** is not exhaustive. The Claimant has been affected by the non-payment of her gratuity and pension. Further, the issue of whether the Auditor General is a public authority is one which may also affect others who may make an application under the FOIA. The Appellant is entitled to bring proceedings pursuant to Section 5 of the Judicial Review Act. She fulfils the criteria for standing in the public interest as a challenge of this nature usually raises public law issues of general importance.

37. The issue of locus standi should have been raised in limine at the case management stage or at the leave stage or at an application to set aside. The preliminary point should have been raised pursuant to Part 26.1 (1)(k). With respect to the issue of it being academic in nature, Counsel submits that the objection should have been taken at an early stage: by way of Notice of Application to set aside leave to apply for judicial review or a response to the FOIA request.
38. Reference was made to **Devant Maharaj v Ministry of Agriculture Land and Fisheries CV 2018-01642** at paragraph 25 the Court states, *"I agree with Senior Counsel for the Claimant that the issue of lack of locus standi was a preliminary challenge which the Defendant ought to have taken upon being served with the substantive Fixed Date Claim. The Defendant did not respond to the Claimant's Pre-Action Protocol letter raising the issue of the Claimant's lack of locus standi and he did not apply to set aside the permission to file for judicial review on the basis of lack of locus standi. For these reasons the Defendant's submissions on the lack of locus standi do not find favour with me and I am not minded to dismiss the claim or set aside the permission on this basis"*.
39. In support of the contention that the issue of standing is to be dealt with at the leave stage Counsel refers to **Sanatan Dharma Maha Sabha v Patrick Manning** and **R v Monopolies and Mergers Commission ex parte Argyll Group P/C (1986) 1 WLR 763at 773**. Counsel also relies on the cases of **Reg v Inland Revenue Commissioners ex parte Federation of Self Employed 1982 AC 617 at 644** and **Chandresh Sharma v The Attorney General Civ App No. 115 of 2003** where a liberal approach was taken when considering the issue of locus standi.
40. In **Regina v Somerset County Council and Another (unreported)** Sedley J did not agree that the decision under challenge must not be one in respect of which the ordinary citizen does not have a sufficient interest to entitle him to obtain leave to move for judicial review. At paragraphs 18 and 19 the Court states:

*"18. The last of these cases, **R v Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd** was not apparently cited to Popplewell J,*

and has not been cited to me, but I take the liberty of referring to it because it appears to me to reassert a very strong and old line of authority of which the Courts have lost sight. The decision of the Division Court in the World Development Movement case is summarized for this purpose in the first holding in the headnote:

“that since standing went to jurisdiction it was not to be treated as a preliminary issue but was to be taken in the legal and factual context of the whole case; that the merits of the challenge were an important, if not, dominant factor when considering standing and the significant factors pointing to the conclusion that the applicants had sufficient interest... .. were the importance of vindicating the rule of law, the importance of the issue raised, the likely absence of any other responsible challenger, the nature of the breach of duty against which relief was sought and the prominent role of the applicant in giving advice, guidance and assistance regard aid”.

19. For each of these elements at 395-6 Rose LJ cites authority. He cites, too, a sentence in *Wade & Forsyth, Administrative Law* (7th Ed):

“The real question is whether the applicant can show some substantial default or abuse and not whether his personal rights or interests are involved”

41. Counsel relied on **Devant Maharaj v AG (supra)** and **Hunt v North Somerset Council [2015] UKSC 51** where the Court held at paragraph 12, “The judgment of the Court of Appeal itself ruled that the respondent acted unlawfully, and the authority of the judgment would be no greater or less by making or not making a declaration in the form of the order to the same effect. However, in circumstances where a public body has acted unlawfully but where it is not appropriate to make a mandatory, prohibitory or quashing order, it will usually be appropriate to make some form of declaratory order to reflect the Court’s finding. In some cases it may be sufficient to make no order except as to costs; but simply to dismiss the claim when there has been a finding of

illegality is likely to convey a misleading impression and to leave the claimant with an understandable sense of injustice”.

42. Counsel relies on the cases on **Deuss v The Attorney General for Bermuda and The Commissioner of Police For Bermuda [2009] UKPC 38** and **R (W) v Commissioner of Police of the Metropolis [2007] Q.B. 399** in support of the contention that a matter of general importance or concern is one which is deemed appropriate to be ventilated. In **R v British Broadcasting Corporation Ex P Quintavalle (1998) 10 ADMIN LR 425** the Court stated:

“It is sometimes appropriate to approach the case in terms of the need for guidance and issue a general principle rather than the merits and prospects of the success of the individual case. In that case it was suggested that two questions were relevant to this approach: (i) whether there is any remedy which the Claimant could be granted which would be of value to the decision maker; and (ii) whether the present application is an appropriate vehicle for such guidance. In my opinion the answer to both these questions is yes”.

43. The issue at hand directly affects the Claimant’s rights and obligations should she request information in the future. Further, it meets the test in **Heathrow Hub (supra)** as it is a point of statutory construction.
44. Counsel submits that it is not overstepping its boundaries into legislating. It is simply performing its judicial function of statutory interpretation and construction. The case of **Ghany v The Compensation Committee and the Attorney General of Trinidad and Tobago [2015] UKPC 12** as submitted by the Defendant is factually irrelevant. The Court is interpreting Sections 116 and 117 of the Constitution; Sections 7-11, 24-25, 31, 41, 45 of the Exchequer and Audit Act in the context of Section 4 of the FOIA to determine whether the Auditor General is a public authority. Section 116 (6) of the Constitution does not explicitly state that the Auditor General is not a public authority.

45. With respect to the definition of “on behalf of” as provided by the Defendant, Counsel refers to the Exchequer and Audit Act which outlines the duties and functions of the Auditor General which it exercises on behalf of the State. These are public functions for which the State is ultimately responsible.

DEFENDANT’S SUBMISSIONS IN REPLY

46. Counsel for the Defendant submits that there is no evidence before the Court to suggest that there is a discernible benefit to the public at large so as to determine the issue.

47. The instant proceedings can be distinguished from the case submitted by the Claimant **Vijay Singh (supra) Civ App** where at the Appeal Court the Claimant submitted fresh evidence where the Ombudsman continued to maintain the position that it was not a public authority. As such there was a strong evidential basis for the Court of Appeal to remit the matter to the High Court.

48. In Bernard Mohamdally the Court recited the learning as it relates to the object and purpose of the Act but also went on to consider whether the Defendant fell within any of the definitions at Section 4 (h) and Section 4(k) (i) the latter of which was so phrased to include the Defendant. The object and purpose of the Act was treated not as a standalone provision which would allow for the Defendant to be deemed a public authority but as an aid to the construction of the applicable section which determined whether it is a public authority.

Whether the Claimant has the locus standi

49. The Court will first examine the question as to whether this action ought to have been commenced by way of interpretation summons. In their submissions in response the Defendant submitted that as the Claimant had been provided with the information she requested, she ought not to have filed the application for judicial review, but rather have made an application for an interpretation of the Constitution and FOIA to determine whether the Auditor General is a public authority under the Act. At the hearing of the matter, the Court enquired of both parties as to who would be a party

to an Interpretation action. The Claimant submitted that it would likely be the Auditor General while the Defendant submitted that it would be the Attorney General.

50. It is unfortunate that this argument was only raised in the submissions in reply, thus making it difficult or even impossible for the Claimant to address it fully or indeed seek to make adjustments to the claim if it thought it necessary. It is the Court's view that the matter ought to have been raised at the earliest possible moment, even at the directions hearing. As it stands now, the Court is of the view that (a) the submission is made too late in the proceedings and (b) in any event the Court is seized of a claim which can properly make the determination with the parties currently before it. Had the Claimant not been provided with the information, the Court would have had to make the determination with the claim as constituted as was the case in **Vijay Singh v The Ombudsman (supra)**.

51. The issue of locus standi, while usually decided in the preliminary stages, can also be ventilated later on in proceedings. In reliance on **Regina (Wylde and others) v Waverley Borough Council (supra)** submitted by Counsel for the Defendant, the Court has to consider beyond what can be seen at the preliminary stage when locus standi is typically decided. In order to determine standing the Court has to consider the meaning of "public authority" which can only be determined after considering the legal and factual context of the case.

52. Section 39 of the FOIA provides for a person aggrieved by a decision of a public authority to apply for judicial review. In relation to when the issue of locus standi is to be determined the Court refers to **Merlin Samlalsingh (supra)** which defines what an aggrieved person is for the purposes of the FOIA. Paragraphs 18 and 19 the Court stated:

"In order to obtain relief under the FOIA a Claimant is required to satisfy the Court that he is an aggrieved person for the purpose of section 39 of the FOIA which provides: "For the removal of doubt a person aggrieved by a decision of a public authority under this Act may apply to the High Court for judicial review ..."

19. In my view, a person is aggrieved for the purposes of the FOIA if his application under the FOIA is not treated, both in terms of timeliness or substance, as that statute requires. If the application is not answered within the time prescribed by the Act, the applicant may be justified in his contention that he is aggrieved. He may approach the Court under section 39. Similarly, if he is of the view that the public authority was incorrect in refusing him access to certain documents, he is aggrieved and may institute judicial review proceedings, as contemplated by section 39.

53. A person is afforded the status of an aggrieved person if their FOIA application is not answered within the prescribed time or if the public authority incorrectly refused access to documents.

54. Counsel for the Defendant submits that there is no public interest other than her own. The Court disagrees. The Court refers to the World Development Movement case where it was stated, ***“the significant factors pointing to the conclusion that the applicants had sufficient interest... .. were the importance of vindicating the rule of law, the importance of the issue raised, the likely absence of any other responsible challenger, the nature of the breach of duty against which relief was sought and the prominent role of the applicant in giving advice, guidance and assistance regard aid”***.

55. While the Claimant has been provided with the requested documents, the case concerns the construction of “public authority” under the FOIA. It is not simply the provision of information allowed under the FOIA but that which is afforded by public authorities in particular which the Defendant disputes that it is. While her rights may not be personally affected, it is a live issue which ought to be determined in the public’s interest. The Court is of the view that aggrieved ought to be given a wide interpretation. In this case the Claimant is rightly aggrieved because the Public Authority maintains that it is not subject to the FOIA, even though it provides the information. While **Merlim Samlalsingh** only speaks to the situation where a person

has been refused access of the documents; that case dealt with a situation where the Claimant had in fact been denied access to the documents. In the instant case, the Claimant has also been denied access under FOIA, but has been granted access under different grounds, that is to say the discretion of the Defendant. The Court is of the view that this refusal under FOIA makes the Claimant aggrieved under Section 39, even though she has been provided with the requested documents.

56. Further, Counsel for Claimant concedes that there was no provision of information relating to persons who have applied for information from the Defendant and have been unable to access same nor pending matters before the Court. However, the Court is alive to the fact that the Claimant would not have access to that information. Indeed it is only the Defendant who could provide such information and has chosen not to do so. It therefore, falls ill from the Defendant's lips to attempt to distinguish **Vijay Singh** on the basis that there is no evidence that others are affected. Further, it is to be noted that there are currently no local cases dealt with the above-mentioned issues so they ought to be ventilated.

Whether the issue is merely academic and not suitable for determination

57. In **R (on the Application of Williams) v The Secretary of State for the Home Department [2015] EWHC 126 (Admin)** where at paragraph 55 the Court stated:

"However: i) A distinction can be drawn between an issue which is "academic" and one that is "hypothetical" (see, e.g., Omar at [37] per Beatson J; and Sir John Laws, "Judicial Remedies and the Constitution" (1994) 57 MLR 213). An academic question is one which does not need to be answered for any practical purpose at all. A hypothetical question is one which may need to be answered for real practical purposes at some stage, although the answer may not have immediate practical consequences for the particular parties in respect of the extant matter before the Court. ii) The Courts will not determine academic issues. However, in a public law claim, it has a discretion to hear a matter which raises a hypothetical question, even when the determination of that question will not directly affect the rights and obligations of the parties inter se in an extant cause (see, e.g., R v Secretary of State for the Home Department ex parte

Salem [1999] 1 AC 450 at page 456 per Lord Slynn). 2021-11-19 12:07:34 iii) Nevertheless, the Court will only do so if there is good reason in the public interest, and then only after exercising considerable caution (ibid). iv) Whether it is in the public interest for the Court to proceed to determine an issue which has become hypothetical will, of course, depend upon all the circumstances of the particular case. In R v BBC ex parte Quintaville (1998) 10 Admin LR 425, Lord Woolf MR (with whom Aldous and Chadwick LJ agreed) said that the exercise of the Court's discretion should be informed by two considerations: (i) whether there was any relief that could be granted "which would be of value to those who have to decide matters such as this" and (ii) whether the particular case was an appropriate vehicle for providing that guidance. If an issue is necessarily fact-sensitive, it is unlikely to be in the public interest to proceed. If it is likely that the Courts will be required to determine the issue in the near future, it may be more likely to be in the public interest for the issue to be determined now, especially if it affects a substantial number of people and/or the costs of preparing the issue for hearing have already been expended by the parties." [emphasis supplied]

58. It is undisputed that the Claimant did receive the information she requested. However, the Auditor General stated that it is not a public authority under the FOIA. If one were to look at the object of the Act, it provides for the disclosure of information **in the hands of public authorities**. It is not simply handing over information. One also, has to look to the particular body handing over the information. This is an issue which needs to be resolved. As noted above, the Defendant has failed to disclose whether, there are or have been other requests under FOIA which have been similarly treated in circumstances where it would be the only body with that information. The Court therefore, is entitled to draw the inference that there are or have been and likely will be such requests in the future.

59. I agree with Counsel for the Claimant that the information was not provided because of a legal duty arising out of the FOIA but rather as a matter of administrative discretion. As such there exists the possibility that the Auditor General can deny

access on the basis of it not being subject to the FOIA, an issue which may need to be resolved in the future. The Court took into account **Vernon Reid v Her Worship Magistrate Joan Gill CV 2009-02631** and **Kamla Jaggessar v The Teaching Service Commission CV 2009-01445**. Should there be any challenge in the future and in order to further the objective of the Act there must exist clarity on what entities are considered public authorities to be strictly bound by the Act.

60. Counsel for the Defendant submits that it is notable and highly relevant that the Claimant has not asked for a bare declaration alone. The Claimant has asked to take further steps to issue a positive remedy. The Claimant has asked for an order of certiorari to quash what it seems to be the decision of the Auditor General that it is not a public authority. You cannot give an order of certiorari without getting into the facts, without considering whether that decision is flawed. However, the Court is of the view that there is much to be gained from declaratory relief as it provides advice to the office of the Auditor General in dealing with future FOIA applications. There is no need to delve into the facts of the case having regard to the fact that it concerns the construction of “public authority” under the FOIA.

61. In **Florence Bobb (supra)** the Court stated at paragraph 33, *“Whilst these matters concern the legitimacy of Government, there is no real need for this Court to grant a declaration in vacuo, there being no actual incident of illegal retention of power as general elections were called before October 31st 2002. This Court would hesitate to decide questions about events which might never occur”*. However, in the present case, as the Defendant maintains its position that it is not a public authority, once applications continue to be made under the FOIA it is an issue which needs to be determined. It is not an event which never occurred, in other words, an issue which has been resolved. It remains a live issue.

62. Counsel for the Claimant also sought to distinguish the claim from **Balram Singh (supra)**. In that case it was held that there was no substantial benefit to be gained other than a declaration as to the legality of a decision made almost a decade ago. However, in the current proceedings the decision being challenged is one that was

made on the 15th day of January, 2021. Further, the public at large would achieve substantive benefit from the Court's intervention on the issue. Based on the above the case cannot be considered to be academic.

63. Counsel for the Defendant cannot rely on the fact that the information was provided and it was done so in a timely manner so as to oust the Claimant from Section 39 and even make reference to other sections of the FOIA yet maintain that the determination of its status as a public authority is not one which will serve a practical purpose. The Act revolves around the provision of information in the hands of public authorities. There was also, no submission made by Counsel to show on what other basis this documents were provided. There was an acknowledgment of the relationship between the provision of the documents and the FOIA. The FOIA refers to public authorities. It is an issue which needs to be ventilated. The Court agrees with the submission made by Counsel for the Claimant in that the decision that the Auditor General is not a public authority is separate and apart from the provision of documents to the Claimant.

Whether the Auditor General is a public authority within the meaning of the FOIA.

64. The Claimant submitted that it also, was a public authority under 4(h) that is a body to which responsibility has been assigned to a Minister. The Court is of the view that this submission cannot stand. While the Minister of Finance may be the conduit between the Auditor General and Cabinet, the Minister is not responsible for the functioning of the Office of the Auditor General whose independence from Government control has been constitutionally enshrined.

65. The only section under which the Defendant may be considered a public authority is Section 4 (k) of the FOIA. The Court must determine whether the Auditor General performs functions which it exercises on behalf of the State and/or if it is one supported by Government funds and over which the Government exercises control. In order to perform its role and function the Auditor General is supported by Government funds which the Defendant accepts in the Legal Opinion dated the 10th day of February, 2003.

66. Counsel for the Defendant submits that once you start on the premise that the office is not subject to the direction and control of any other person or authority and come down to the Section 4 (k) (i) and (iii) one will see that Section 4 (k) (i)-(iii) cannot apply to the Auditor General. However, while Section 116(6) of the Constitution shields the office of the Auditor General from direction or control of any person, this is specifically in relation exercises its functions. While performing its duties it must remain independent to produce a transparent report free from influence of any Government bodies. It must be noted that independence itself does not necessarily render the Auditor General not a public authority. Parliament would not have intended Section 116(6) to allow for the Auditor General to be free from being held accountable.

67. The fact still remains that after his functions have been performed the Auditor General is obligated to submit reports to the Speaker, President of the Senate and the Minister of Finance which is also provided for in the Constitution under Section 116(4).

68. Following this said obligation to send reports to the Minister of Finance, as contained in the Constitution, the Exchequer and Audit Act provides for what the Minister may ask of the Defendant:

S.9(3) Notwithstanding the provisions of subsections (1) and (2) the Auditor General may, after satisfying himself that the vouchers have been examined and certified as correct by the accounting department, in his discretion and having regard to the character of the departmental examination, in any particular case admit the sums so certified in support of the charges to which they relate without further examination; but if the Minister desires the vouchers or any of them to be examined in greater detail the Auditor General shall take action accordingly.

(5) If the Auditor General is required by the Minister to ascertain whether any expenditure included in any appropriation account is supported by the authority of the Treasury, he shall examine that expenditure with that object, and shall report to the Minister any expenditure which appears upon the examination to have been incurred without the authority, and any such unauthorised expenditure shall, unless sanctioned

by the Minister, be regarded as not being properly chargeable to a grant of Parliament, and shall be so reported to Parliament.

S. 25 (1) On receipt of the accounts prescribed by section 24, the Auditor General shall cause them to be examined and audited and shall, within a period of seven months after 30th September in each year or such longer period thereafter as Parliament may by resolution appoint, prepare and transmit to the Minister a report upon his examination and audit of all accounts relation to public moneys, stamps, securities, stores and other State property, together with certified copies of each of the said accounts.

69. In relation to the meaning of “on behalf of” within Section 4(k)(i) according to the Cambridge Dictionary 2022 definition it means, “*done for another person’s benefit or support or because you are representing the interest of that person*”. As the State is interpreted to mean “the people of Trinidad and Tobago” as noted in Bernard Mohamdally (supra) at paragraph 14 and the office of the Auditor General is charged with auditing and reporting on public accounts, examination of accounts of those entrusted with the assessment of. Collection, receipt, custody, issue and payment of public moneys and the safeguard of same, the Court is of the view that its functions are carried out in the interest of the people, in other words, the State.

70. Undoubtedly the functions of the Auditor General are public in nature. In support of this the Court relies on the establishment of the office under the Section 116 of the Constitution and in particular Section 116 (3) and (4) of the Constitution. Section 117(1) provides for the manner in which the Auditor General shall be appointed and Section 117(6) provides for its staff to be public officers. As seen in Section 117 (6) of the Constitution it provides, “The staff of the Auditor General shall be public officers appointed in accordance with Section 121 (8)”. Section 121 (8) of the Constitution provides, “*Before the Public Service Commission makes any appointment to or transfers a member of the staff of the Auditor General or Ombudsman, it shall first consult with the Auditor General or Ombudsman, as the case may be*”. They fall within

the ambit of the Public Service Commission and as such supports the argument that the Auditor General is a public authority.

71. Further, Section 9(1) of the Exchequer and Audit Act provides, *“The Auditor General shall examine, inquire into and audit the accounts of all accounting officers and receivers of revenue and all persons entrusted with the assessment of, collection, receipt, custody, issue or payment of public moneys, or with the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other State property”* and section 9(2) (a) provides, *“The Auditor General shall satisfy himself that—(a) all reasonable precautions have been taken to safeguard the collection of public moneys and that the laws, directions and instructions relating thereto have been duly observed”*.

72. There can be no doubt that the Defendant is acting on behalf of the State in the sense that is acting in the interest of the State. Section 4(k)(i) of FOIA therefore, applies and the Defendant is a public authority under the Act.

Is the Defendant/the documents sought subject to any other exemptions under the Act.

73. Section 3(b) of the FOIA provides that there is a right of access to information in the hands of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interest. This office was not listed as a body to be exempt under the Act. The Court took note of the submission made by Counsel for the Claimant in that Parliament carefully crafted the distinction between Court Administration and a Judicial Officer acting in his relevant capacity under Section 5(2) they would have simply done so for the office of the Auditor General.

74. The Court also took note of Counsel for the Claimant’s submissions that under Part IV of the FOIA it categorizes exempt documents and there is no indication as to whether any of the said listed documents emanate from the Defendant’s office. Counsel also referred to Section 5 (1) (c) of the FOIA which provides, *“This Act does not apply to – (a) the President; (b) a commission of inquiry issued by the President; or (c) such public*

authority or function of a public authority as the President may, by Order subject to negative resolution of Parliament, determine”. In addition to these provisions, the Exemption Order does not refer to the office of the Defendant. Had Parliament intended for the Auditor General to be exempt it would have expressly provided for same.

CONCLUSION

75. In the circumstances, the Court is of the view that the Defendant is a public authority under the FOIA and therefore, is required to provide the Claimant and any other person with non-exempt documents pursuant to requests made under the Act. The Court will therefore, make a declaration to that effect. With respect to the other relief sought, the Court is of the view that there is no need to quash any decision as the declaration ought to be sufficient to guide the Defendant’s policy moving forward. The Defendant relied on an opinion rendered by the Solicitor-General, which this Court has indicated is incorrect. There is no need for this Court to take further action.

76. The order of the Court therefore, is as follows:

- a. The Court declares that the Defendant is a public authority under the provisions of Section 4(k) (i) of the Freedom of Information Act, Chapter 22:01.
- b. The Defendant will pay the Claimant’s costs of the Claim certified fit for one (1) Senior and one (1) Junior Counsel. Costs to be assessed by a Registrar if not agreed.

KEVIN RAMCHARAN
JUDGE