
**Easter Term**
[2026] UKPC 14
**Privy Council Appeal No 1001 of 2024**

# JUDGMENT

# Devant Maharaj (Appellant) *v* National Gas Company of Trinidad and Tobago (Respondent) (Trinidad and Tobago)

## From the Court of Appeal of the Republic of Trinidad and Tobago

before

**Lord Hodge**
**Lord Lloyd-Jones**
**Lord Sales**
**Lord Hamblen**
**Lord Stephens**

**JUDGMENT GIVEN ON**
**14 April 2026**

**Heard on 2 October 2025**

*Appellant*
Anand Ramlogan SC
Jodie Blackstock
Mohammud Jaamae Hafeez-Baig
(Instructed by Ganesh Saroop)

*Respondent*
Sir James Eadie KC
George Molyneaux
(Instructed by Messrs. Alexander, Jeremie & Co.)

**LORD SALES:**

1. This appeal is concerned with the response by the National Gas Company of Trinidad and Tobago ("NGC") to a request for documents made by the appellant under the Freedom of Information Act 1999 ("FOIA"). The appellant describes himself as a social and political activist. He was formerly Minister of Transport and has also served as a Senator in the Parliament of Trinidad and Tobago. The documents requested relate to a proposed agreement between the Government of Trinidad and Tobago ("the Government") and NGC, on the one hand, and the Republic of Venezuela and the state-owned oil company, Petroleos de Venezuela SA (together, "Venezuela") on the other for the construction of a gas pipeline from Venezuelan waters to the Hibiscus platform located in Trinidad and Tobago.

2. It is common ground that NGC is a public body which is subject to FOIA. So far as is relevant to this appeal, NGC decided that documents in its hands falling within the scope of the appellant's request fell within certain exemptions specified in FOIA and should not be disclosed. The appellant challenges that decision.

3. The case raises issues of law regarding the interpretation of FOIA, the proper approach of a public body in dealing with a request for disclosure of documents under that Act and the approach to be adopted by a court in conducting a judicial review of a decision by a public body to refuse to disclose documents pursuant to FOIA. The case also raises issues on the facts regarding the interpretation of NGC's response to the appellant's request.

**The Freedom of Information Act 1999**

4. FOIA is a major piece of legislation designed to give members of the public access to information held by public authorities in documentary form, subject to the operation of certain exemptions. The courts in Trinidad and Tobago have rightly emphasised the importance of the right to information created by FOIA to inform debate in a democratic society: *Caribbean Information Access Ltd v Minister of National Security* Civil Appeal No 170 of 2008 ("*Caribbean Information Access*"), para 8; *Minister of Planning and Sustainable Development v Joint Consultative Council for the Construction Industry* Civil Appeal No P 200 of 2014 ("*Joint Consultative Council*"), paras 29–31. But the Act recognises that access to information held by public bodies has to be restricted in some circumstances in recognition of the functions carried out by them in the public interest and in recognition of certain private and business affairs of private persons: see section 3(1)(b).

5. Section 3 provides in relevant part:

> "(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 …
> >
> > (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."

6. Section 11(1) provides that "[n]otwithstanding any law to the contrary, and subject to the provisions of this Act, it shall be the right of every person to obtain access to an official document".

7. Section 14 sets out a duty on public authorities to assist applicants to make requests in the proper form, identifying relevant documents (as set out in section 13). Section 14(3) provides that "Without prejudice to section 21 [no obligation to comply with unduly burdensome requests], a public authority shall take reasonable steps to assist any person in the exercise of any other right under this Act".

8. Section 15 sets out the time limit for decisions regarding disclosure. Section 16(2) provides that where a decision is made not to grant access to a document on the ground that it is an exempt document within the meaning of FOIA, but "it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document", and it appears the applicant would wish to have access to such a copy, "the public authority shall give the applicant access to" the copy.

9. Section 22 provides:

> "(1) A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer.
>
> (2) Where a request is made to a public authority for a document, and no arrangements in respect of documents of that type have been made and published under the Regulations, a decision on that request shall, for the purpose of enabling an application for judicial review to be made, be deemed to have been made by the responsible Minister of the public authority."

For present purposes, "responsible Minister" is defined in section 4 to include the Minister of Government to whom responsibility for the public authority is assigned.

10. Section 23 provides in relevant part:

> "(1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall-
>
> > (a) State the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision …
> >
> > (d) Inform the applicant of his 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 …
>
> (2) In a notice under subsection (1), a public authority –

(a) Shall not be required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document …"

11. Part IV of FOIA sets out a series of descriptions of documents which are exempt documents. Section 26 sets out an exemption for documents the disclosure of which would prejudice the international relations of the Government of Trinidad and Tobago. Section 29 sets out an exemption for documents covered by legal professional privilege. Section 31 sets out an exemption in relation to documents which are commercially confidential. It provides in relevant part:

"(1) A document is an exempt document if its disclosure under this Act would disclose information acquired by a public authority from a business, commercial or financial undertaking, and-

(a) The information relates to trade secrets or other matters of a business, commercial or financial nature; or

(b) The disclosure of the information under the Act would be likely to expose the undertaking to disadvantage.

(2) In deciding whether disclosure of information would expose an undertaking to disadvantage, for the purposes of paragraph (b) of subsection (1), a public authority may take account of any of the following considerations:

(a) Whether the information is generally available to competitors of the undertaking;

(b) Whether the information would be exempt information if it were generated by a public authority;

(c) Whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and

(d) Whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of regulation by a public authority of corporate practices or environmental controls,

and of any consideration or considerations which in the opinion of the public authority is or are relevant.

…

(4) A document is an exempt document if-

(a) it contains-

(i) a trade secret of a public authority; or

(ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial nature,

that would if disclosed under this Act be likely to expose the public authority to disadvantage; …"

12. Section 35 is an important provision which sets out a public interest balancing test to govern whether an exempt document in any of the categories listed in Part IV should be disclosed or not, as follows:

"(1) 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 which may arise from doing so."

13. Section 38A provides that a person aggrieved by the refusal of a public authority to grant access to an official document may complain to the Ombudsman, who may make recommendations. Subsection (3) states that a public authority is required to consider the recommendations "and, to such extent as it thinks fit, exercise its discretion in giving effect to the recommendations".

14. Section 39(1) 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 of the decision."

**The Judicial Review Act**

15. The Judicial Review Act (2000) puts into statutory form in Trinidad and Tobago the grounds of judicial review. Section 5(3) provides in relevant part:

"The grounds upon which the Court may grant relief to a person who filed an application for judicial review include the following:

(a) that the decision was in any way unauthorised or contrary to law;

(b) excess of jurisdiction;

(c) failure to satisfy or observe conditions or procedures required by law;

…

(e) unreasonable, irregular or improper exercise of discretion;

(f) abuse of power;

(g) fraud, bad faith, improper purpose or irrelevant consideration;

…

(i) conflict with the policy of an Act;

(j) error of law, whether or not apparent on the face of the record;

(k) absence of evidence on which a finding or assumption of fact could reasonably be based;

(l) breach of or omission to perform a duty;

…

(n) a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; or

(o) an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power."

**Factual background**

16. On 18 December 2018 attorneys acting for the appellant made a request to NGC under FOIA ("the 18 December request") for disclosure of 12 categories of documents related to a proposed transaction between Venezuela and the Government for the

importation into Trinidad and Tobago of natural gas extracted from the Dragon Field in Venezuelan territorial waters via a gas pipeline to be constructed, with a view to it being processed in Trinidad ("the gas deal"). The request described the appellant's background as a social and political activist and former Minister and stated that he was part of the Transparency Committee of the United National Congress, the official Opposition, and was "responsible for monitoring the public state sector to ensure transparency, fairness and equity and the prevention of corruption".

17. The 18 December request stated that the appellant was concerned about the proposed expenditure of a large amount of public money on the construction of the pipeline, where there was a lack of information about the procurement process; about the fact that the public had not been informed about the environmental impact which the proposed construction and operation of the pipeline would have; and about the fact that the gas deal was being done with Venezuela, "a country experiencing crippling socioeconomic, humanitarian and political crisis since 2010, under the presidency of Nicolas Maduro" and which had been reported in the international press "as a human rights disaster". Press reports about the situation in Venezuela and about the proposed gas deal and its cost were referred to. The 18 December request also raised the question whether any agreement with Venezuela in relation to the gas deal would be binding, because article 150 of Venezuela's constitution required the approval of the National Assembly for such a contract.

18. The 12 categories of document referred to in the 18 December request included "copies of all agreements, memorandums of understanding and/or contracts between [Venezuela] and [the Government] and/or [NGC] as it relates [sic] to the construction of [the pipeline]…" (category 1); "the policy, practice and procedure being utilised by [the Government] and/or NGC for certifying and/or assessing the proposed gas deal as being legally enforceable by [the Government]" (category 4); "copies of any documents relative to cost of construction of the pipeline and who will be responsible for paying for same" (category 8); "the minutes of all meetings at NGC for the proposed gas pipeline deal" (category 12); and copies of documents relating to the consideration by the Government of the commercial and economic case for the gas deal and its cost, whether it was environmentally safe, the procurement process, legal advice regarding the impact of international sanctions in respect of Venezuela and the cost per unit of gas imported which the Government would be obliged to pay, and copies of all drawings and plans in relation to the proposed pipeline.

19. The 18 December request drew the attention of the NGC to section 35 of FOIA (para 12 above) and said it "mandates disclosure of even exempt information in the public interest". The request continued, "The fact that the Government and/or NGC has sought to enter into such a deal with far reaching implications, … financially, socially and internationally, in such a clandestine [manner] is an indictment [of] the Government's own lack of transparency and accountability".

20. By a letter dated 6 February 2019 from attorneys acting for NGC, NGC responded to the 18 December request ("the 6 February response"). The request was refused in relation to six categories of document, including categories 1, 4, 8 and 12.

21. As regards category 1, the 6 February response stated:

> "International and confidential negotiations which pertain to the purchase and sale of gas between Venezuela and Trinidad and Tobago and which also includes negotiations with NGC and a multinational third party, are currently ongoing and are at a sensitive stage.
>
> Disclosure will inter alia thwart and/or adversely affect NGC's successful closure of current negotiations and/or adversely affect its ability to enter into future business ventures for the benefit of the country and the citizens of the Republic of Trinidad and Tobago and/or harm NGC's commercial reputation, good will and competitiveness in the global energy arena.
>
> Consequently, these documents, if disclosed:
>
> - would prejudice relations between [the Government] and [Venezuela] and would divulge confidential information and matters communicated and negotiated in confidence between the two countries (section 26(a) and (c) of the FOIA)
>
> - would disclose information of the nature described in section 31(1) and 31(4) which if disclosed, would likely expose NGC to disadvantage (section 31(4)) – such information is not generally available to competitors and cannot be disclosed without causing substantial harm to the competitive position of NGC in its ongoing negotiations. *At this time, public interest considerations in favour of disclosure do not outweigh considerations of competitive disadvantage*
>
> - would contain information from a third party who has consistently treated it as confidential and the disclosure of that information to a competitor would be likely to prejudice

the lawful commercial activities of the third party (section 33(1)(d);

- would reveal information to a competitor of NGC; would be likely to prejudice the lawful commercial activities of NGC (section 33(1)(c); and contains information to be applied in negotiations ([section 33(1)(e));

*and are not disclosable notwithstanding section 35 of the FOIA*" (emphasis added).

In relation to this and the other categories, the appellant was informed that Mr Mark Loquan, the President of NGC, had made the decision, and was also informed of his rights to apply to the High Court for judicial review and to complain to the Ombudsman.

22. The answer given in relation to category 4 was that the legal opinion was an exempt document under section 29 of FOIA (legal professional privilege) and:

"Further, the document, if disclosed:

- its disclosure would disclose information which would likely expose NGC to disadvantage (section 31(1)(b)) - such information is not generally available to competitors and cannot be disclosed without causing substantial harm to the competitive position of NGC in its ongoing negotiations. *At this time, public interest considerations in favour of disclosure do not outweigh considerations of competitive disadvantage*

- its disclosure would be contrary to the public interest by reason that it would disclose instructions issued to or provided for use or guidance of officers of NGC to be applied in negotiations ([section] 33(1)(e))

*and is not disclosable notwithstanding section 35 of the FOIA*." (Emphasis added)

23. The response given in relation to category 8 was in the same terms as that in relation to category 1 (para 21 above).

24. The response given in relation to category 12 stated:

> "These documents contain information of a business commercial or financial nature and/or would disclose guidance on the criteria to be applied in contract negotiations, including financial and commercial negotiations relative to the gas deal which is under negotiation *and are not disclosable notwithstanding section 35 of the FOIA*." (Emphasis added)

25. The appellant's attorneys sent a pre-action protocol letter dated 18 April 2019 to challenge the 6 February response, in particular on the basis that NGC had failed properly to consider the public interest factors under section 35 of FOIA, which the appellant contended weighed heavily in favour of disclosure. NGC's attorneys replied to maintain NGC's refusal of the 18 December request and stating that proper consideration had been given to the public interest factors under section 35.

26. The appellant then commenced this claim for judicial review. The evidence filed by NGC in response to the claim did not include an affidavit from Mr Loquan, the decision-maker. Instead, it filed (i) an affidavit from Mr Frank Look Kin, a consultant petroleum engineer with experience of the energy sector in Trinidad and Tobago and the negotiation of gas supply contracts and (ii) an affidavit from Ms Verlier Quan-Vie, Vice-President, Commercial, of NGC.

27. Mr Look Kin gave evidence of what he described as "the vital necessity, during the negotiating process [for gas supply contracts], of maintaining the confidentiality of the proposed terms of the contracts under negotiation", because of the negotiating process itself and in particular because of NGC's position as purchaser of gas from suppliers upstream and as vendor of that gas to purchasers downstream. NGC needed to be able to maintain confidentiality in order to obtain the best commercial terms possible in both upstream and downstream contracts and so achieve and maintain its profit margin in relation to the onward supply of gas. Moreover, disclosure by one party of the contents of any pre-contract documents signed by the parties to facilitate their negotiations would very likely result in the termination of such negotiations, or would render them more difficult, because the disclosing party would be regarded as an untrustworthy partner. Mr Look Kin did not suggest that he had been consulted by NGC for the purpose of taking the decisions regarding disclosure which led to the 6 February response.

28. Ms Quan-Vie gave evidence about her long experience with NGC, including in negotiating gas supply contracts, and stated that she was familiar with NGC's practices and protocols involved in such negotiations. She explained that the oil company Shell was NGC's partner in the development of the oil and gas industry in Trinidad and Tobago, and was also to be involved in the proposed gas deal. She said that NGC's decision not

to disclose the documents, made by Mr Loquan, was necessary for the protection of essential public interests, the private and business affairs of NGC, and the private and business affairs of other persons, including Shell. She maintained that disclosure of the information sought by the appellant "would cause irreparable harm to NGC, to third parties (including Shell), to the public and to the country as a whole and would put the country's entire economic future in jeopardy". The gas deal was of great economic importance for Trinidad and Tobago, and disclosure of the documents sought by the appellant "could well ruin NGC's and Shell's chances of further negotiating and eventually concluding" that deal. That could also have the consequence of jeopardising NGC's ability to commercialise the production of gas from other fields owned by Venezuela, for which it required Shell's involvement. Ms Quan-Vie also gave similar evidence to Mr Look Kin concerning the commercial importance for NGC of maintaining confidentiality about the commercial terms being negotiated with Venezuela in relation to the supply of gas. By reason of Shell's close involvement in the negotiations for the gas deal, disclosure of the documents sought by the appellant would also disclose Shell's confidential pricing information, which could well cause it to withdraw from those negotiations and to abandon its partnership with NGC to bring the deal to fruition. Ms Quan-Vie referred in detail to the 6 February response and explained why, in her view, the answers given in it to the disclosure request were justified. However, she did not say that she had been involved in Mr Loquan's decision-making process leading to that response.

29. The documents in issue on this appeal are (in category 1) memoranda of understanding; (in category 4) a legal opinion on whether a neutral governing law can be used in any gas sale and purchase agreement and on the interpretation of Venezuelan legislation; (in category 8) documents relating to the costs of construction of the pipeline, in particular a Term Sheet and Heads of Agreement; and (in category 12) the minutes of all meetings at NGC for the proposed gas deal.

**The proceedings below**

30. The appellant's claim for judicial review of the decisions to refuse disclosure as set out in the 6 February response in relation to six categories of document was dismissed by Mme Justice Quinlan-Williams (Claim No. CV2019-02084). The appellant contended that the validity of the replies in the 6 February response was to be assessed by reviewing the decision made by NGC, acting by Mr Loquan, not to disclose the documents requested, and applying judicial review principles to see whether NGC had made a lawful and rational decision. The appellant's main submission was that NGC had failed to carry out an exercise to balance the competing public interests as required by section 35 of FOIA.

31. The judge recorded that there was no dispute about the purpose and policy of FOIA, and referred in particular to *Caribbean Information Access*, para 8. The burden of

proof lay on the public authority which claimed a document was exempt from disclosure to show that it was reasonable for it to take that view: *Caribbean Information Access*, para 18.

32. Based on a review of the information provided in the 6 February response, the judge found that the NGC had undertaken the balancing exercise required by section 35 and had "clearly provided information and reasons" that militated against disclosure of the documents in the public interest: para 79. However, the judge also said that on the face of the 6 February response there appeared to be an absence of balancing, in that NGC did not set out the factors which weighed in favour of disclosure of the documents; but in the judge's view this was because there were no countervailing factors available: para 80 (a point repeated at para 84). The judge also had regard to the affidavits of Mr Look Kin and Ms Quan-Vie, stating that the latter was "replete with reasons why it was not in the public interest to provide access to the documents and information": paras 81–85.

33. The appellant appealed to the Court of Appeal (Bereaux, Rajkumar and Boodoosingh JJA): CA No S275 of 2020. He submitted that (i) on the face of the decision as set out in the 6 February response it was clear that NGC had not carried out the balancing exercise required by section 35; (ii) it was not permissible to examine the affidavits which NGC had filed after that decision had been made to see if a balancing exercise had been conducted, because the reasons for the decision were those set out in the letter which gave reasons for it, namely the 6 February response; (iii) the judge had erred by carrying out the section 35 balancing exercise herself; (iv) even if it was permissible to have regard to the affidavits alongside the 6 February response, NGC had still not shown that a proper balancing exercise had been carried out; and (v) the decision regarding disclosure should be remitted to NGC for reconsideration, as the relevant balancing exercise could not be conducted by the court.

34. The primary submission by NGC in response was that it had conducted the requisite balancing exercise under section 35, as appeared from the terms of the 6 February response. That was sent as a reply to the 18 December request, in which the appellant himself set out the public interest factors in favour of disclosure, and read in that context the decision explained in the 6 February response took those factors into account in the balancing exercise under section 35. NGC did not seek to support the judge's view that there were no public interest factors pointing in favour of disclosure of the documents. NGC also relied upon the evidence of Ms Quan-Vie to show that the balance of the public interest was against disclosure. (NGC also contended that, for constitutional reasons, it was not a public authority subject to FOIA, but the Court of Appeal did not find it necessary to determine that point and it has not been pursued before the Board.)

35. Rajkumar JA gave the lead judgment, with which Bereaux JA agreed, dismissing the appeal. Boodoosingh JA gave a dissenting judgment.

36. The majority held that it sufficiently appeared from the face of the 6 February response, read as a reply to the 18 December request which set out the public interest factors in favour of disclosure, that the balancing exercise required by section 35 had been carried out. NGC had been rationally entitled to conclude that, notwithstanding the public interest factors relied upon by the appellant in favour of disclosure "and the more general overarching benefits of transparency and accountability", disclosure should not be given because it could have compromised NGC's negotiating position in relation to the gas deal and could have put the very existence of the project in jeopardy: paras 18–19. The majority summarised the position at para 83:

> "The basis of NGC's refusal is apparent. It considered that notwithstanding all public interest considerations in favour of disclosure those would be outweighed by the very real risk of compromise or termination of negotiations for the project. The reference to section 35 in the decision letter [ie the 6 February response] was not simply invocation of section 35. In its proper context it was responsive to a letter by the appellant [ie the 18 December request] in which the public interest factors had been set out by him."

37. Also, since there was evidence in the 6 February response that the balancing exercise had been carried out, the majority held that it was legitimate for NGC to provide further particulars about that exercise in its affidavits, which were consistent with what was said in that response: paras 97–104. Those affidavits also did not explicitly refer to the public interest factors in favour of granting access to the documents requested, nor did they spell out how those were weighed against the reasons against granting access; but they explained in greater detail what the detrimental impact on the public interest would be if disclosure were given: para 101.

38. The majority also held, in the alternative, that if the section 35 balancing exercise carried out by NGC had been flawed, the court itself could conduct the balancing exercise since all the relevant considerations had been canvassed in evidence before it. It was not necessary to remit the decision to NGC. Adopting that approach, the majority concluded that the balance of public interest factors was against disclosure of the documents sought: paras 104–116.

39. Boodoosingh JA considered that the 6 February response failed to set out the public interest factors in favour of disclosure of the documents requested and failed to explain that the public interest balancing exercise required under section 35 had been carried out by NGC. The affidavits of Mr Look Kin and Ms Quan-Vie also did not refer to the public interest factors in favour of disclosure, nor did the affidavits show how they should be weighed against the public interest factors in favour of disclosure. Boodoosingh JA therefore concluded that the question of whether the documents requested in

categories 1, 4, 8 and 12 should be disclosed should be remitted to NGC for further consideration: para 152 and 177. He considered that, unlike in *Joint Consultative Council*, the court was not in a position to reach a concluded view itself on the balance of the public interest factors for and against disclosure, which were of a nature which required assessment by NGC: para 178.

40. At para 171 of his judgment, Boodoosingh JA set out a range of nine public interest factors in favour of disclosure of the documents. These reflected, by way of more detailed specification, the public interest factors identified by the appellant in the 18 December request. At para 171(viii) Boodoosingh JA stated that "the requirements of transparency, the rule of law and accountability within State entities generally favour disclosure". He did not identify any material additional feature of the public interest in favour of disclosure of the documents which went beyond those set out in the 18 December request.

41. The appellant appeals to the Board. He relies on the reasoning of Boodoosingh JA and submits that the appeal should be allowed, the decision of NGC regarding disclosure of the documents in categories 1, 4, 8 and 12 set out in the 6 February response should be quashed and the question whether those documents should be disclosed should be remitted to NGC; in the alternative, if the Court of Appeal was right to determine the question of disclosure itself, it should have held that the public interest considerations favouring disclosure outweighed those favouring non-disclosure and should have ordered disclosure. The appellant also submits that the judge and the Court of Appeal erred in taking into account the affidavits of Mr Look Kin and Ms Quan-Vie, because they contained new ex post facto reasons which had not been set out in the original decision.

**Discussion**

*(a) The importance of freedom of information in a democratic society*

42. FOIA is an important statute which sets out in section 3(1) a right for members of the public to gain access to information in the possession of public authorities (para 5 above). The importance and force of the right is emphasised by section 3(2) (para 5 above). That has also rightly been emphasised by decisions of the Court of Appeal, in particular in *Caribbean Information Access*, *Joint Consultative Council* and in the present case (at para 27, by the majority, and para 171(viii), by Boodoosingh JA). The Board endorses Boodoosingh JA's statement at para 171(viii) that "the requirements of transparency, the rule of law and accountability within State entities generally favour disclosure". Debate in a democracy about matters of public concern is enhanced and made more effective by the public having access to information about them which is held by public authorities (including in particular the authorities making decisions about those matters), so far as is reasonably possible and so far as is compatible with countervailing aspects of the public interest.

43. However, it is not in doubt that in some circumstances there may be countervailing aspects of the public interest which support non-disclosure of documents and information. FOIA identifies such countervailing aspects of the public interest by setting out the series of exemptions in Part IV. In each exemption the nature of the countervailing public interest appears from the way in which it is given expression in the statute.

44. Section 3(1)(b) (para 5 above) provides that the general right of access to information in documentary form created by FOIA is "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". Mr Anand Ramlogan SC for the appellant submits that this provision introduces an additional demanding test regarding the circumstances in which disclosure may lawfully be refused, to supplement the general test in section 35 which is considered below, in that non-disclosure will only be justified where it is "necessary" for the protection of essential public interests and the private and business affairs identified. The Board does not agree.

45. Where one of the statutory exemptions applies, the relevant test regarding disclosure of documents is that set out in section 35 itself. Section 3(1)(b) does not identify an additional test. Rather, the wording of section 3(1)(b) referred to above serves to emphasise the importance of the exemptions set out in Part IV, since it describes them as being "necessary for the protection of essential public interests" and the private interests which are identified. This explains why Parliament decided to qualify the general right of access under section 3(1) by setting out exemptions from it. That wording is neutral as to how the balance of public interest factors should be struck under section 35 when one of the exemptions applies.

*(b) The public interest balancing exercise under section 35*

46. Section 35 (para 12 above) has general application where an exemption in Part IV applies. It structures the approach to be adopted by a public authority in deciding whether to give disclosure of a document covered by one of the exemptions. It has two limbs. The first limb provides that the authority "shall give access to an exempt document" where there is reasonable evidence that one of the particular matters identified in subparas (a) to (d) "has or is likely to have occurred" to a significant extent. Where that is the case, FOIA itself stipulates how the public interest falls to be assessed, namely in favour of disclosure, albeit the duty which it states is qualified by the need for assessment whether such reasonable evidence exists and whether the relevant subparagraph is engaged in a way which is significant. That limb of section 35 is not engaged in this case and it is not necessary or appropriate for the Board to express an opinion whether those are matters in relation to which the decision of the public authority is to be subjected to a rationality assessment on judicial review or an objective assessment made by the reviewing court itself. It is readily understandable that in the classes of case identified in subparagraphs

(a) to (d) Parliament should have decided that there is an especially strong public interest in disclosure of documents so as to give rise to a mandatory requirement of disclosure.

47. It is the second limb of section 35 which applies in this case. That sets out a far more flexible test of whether "in the circumstances" (meaning, in all the circumstances of the case) 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". This calls for a balance to be struck between all those factors of the public interest which point in favour of disclosure of the document and all those factors of the public interest which point against disclosure.

48. The Board notes that under section 16(2) of FOIA (para 8 above), before the stage is reached where it is necessary to carry out the balancing exercise under section 35, the public authority has to consider whether it is possible to make redactions so as to turn the copy of the document so redacted into a document which is not covered by an exemption at all. It is only if that is not possible that the authority has to proceed to carry out the balancing exercise under section 35.

*(c) The approach of a court on judicial review of the section 35 balancing exercise*

49. There is an important issue of principle which arises on this appeal, namely whether the approach to be adopted by the court on judicial review of a decision of a public authority under the second limb of section 35 to refuse to give disclosure of a document is a normal review approach (that is, to treat the authority's decision as lawful provided it is rational and does not infringe any of the other general public law requirements) or an objective approach according to which the court decides for itself where the balance of the public interest lies. This is a point which was referred to by the Board, but was left open, in *Maharaj v Petroleum Company of Trinidad and Tobago* [2019] UKPC 21, paras 42–44, since that case was only concerned with whether a claim was arguable at the leave stage. The Board referred there to differences of approach adopted in the Court of Appeal in that and other cases, including *Joint Consultative Council*.

50. The tension between the two approaches is evident in the present case. The judge adopted the review approach in relation to the decision by NGC, reflecting what at that stage was the common position of the parties. But she also referred to the affidavit evidence filed by NGC, which can be read as addressing the public interest factors as though they fell to be assessed in an objective way, rather than explaining the decision which had in fact been made. In the Court of Appeal the main part of the reasoning of the majority proceeded on the footing that a review approach is correct, but their alternative reasoning proceeded on the footing that an objective approach is correct. Boodoosingh JA adopted the review approach.

51. At the oral hearing the Board asked counsel to explain what position they submit is correct. Sir James Eadie KC for NGC submits that the review approach is correct. That is perhaps to be expected, since that approach will tend to favour a public authority whose decision regarding disclosure of documents is under challenge. Mr Ramlogan for the appellant submitted that the appeal should be allowed even if the review approach is adopted, but also submitted in the alternative that the objective approach is correct and that, applying that approach, the appeal should be allowed.

52. There is a fundamental difference between the two approaches and the proper development of the law of freedom of information in Trinidad and Tobago requires that the Board should determine now what is the proper approach to be adopted in relation to a non-disclosure decision under the second limb of section 35. The Board's view is that the proper interpretation of FOIA indicates that the review approach is correct, for the following reasons.

53. First, FOIA provides that the remedy for a person aggrieved by a decision of a public authority which refuses to give disclosure of a requested document is to apply to the High Court for judicial review of the decision: section 39(1) (para 14 above). This is a significant point. It is true that the mere fact that a challenge is brought by way of judicial review proceedings might not necessarily be decisive to resolve the issue. That is because in some contexts lawful conduct by a public authority may require it to behave in a way which is governed by an objective rule of law, under which the court will make its own assessment whether the rule is satisfied or not and will not defer to the judgment of the authority, and the grounds of review set out in section 5(3) of the Judicial Review Act (para 15 above) would accommodate such an approach: see, for example, cases where lawful action requires that a precedent fact should exist: *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514. However, it is well understood that the usual approach to be adopted in judicial review proceedings is the review approach, which is the standard approach in public law. In the Board's view, if Parliament had intended any other approach to apply under FOIA, it would have used clear language to make that plain.

54. Secondly, the structure of FOIA indicates that it is intended that the review approach should apply. FOIA provides for decisions regarding disclosure of documents to be made in the first instance by the public authority which holds them, with challenges to follow by way of judicial review proceedings. Therefore the Act contemplates that the judgment of the public authority will be the operative decision, and its provisions are directed to explaining how the authority should act. Since Parliament has designated the public authority as the primary decision-maker, it is natural to expect that the proper approach for a court in legal proceedings to challenge its decision should be one of review rather than one which involves it in substituting its own judgment. So, for example, the second limb of section 35 states that a public authority "shall give access to an exempt document" where that is justified in the public interest "having regard … to" any benefit and any damage which may arise from doing so. It is clear that it is the public authority

which is the body which is required to "have regard" to those matters. This indicates that what will be in issue where there is a challenge to the authority's decision will be its own judgment formed by means of having regard to those matters, which strongly suggests that a review approach should be adopted by the court.

55. Thirdly, the fact that the balance under the second limb of section 35 is one regarding "the public interest" reinforces that point. Where decision-making by public authorities is in issue, the usual expectation is that the public interest is something which they have the primary responsibility for assessing. They are constituted as public authorities precisely in order to pursue the public interest, and in general terms it is they who have the knowledge, expertise and constitutional authority to assess what it requires: see, eg, *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7; [2021] AC 765, paras 69–70; *U3 v Secretary of State for the Home Department* [2025] UKSC 19; [2025] 2 WLR 1041, paras 65–82; *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30; [2025] 3 WLR 346, paras 127–129. This is underlined in the context of FOIA by the strong policy dimension of many of the exemptions set out in Part IV: eg documents relating to deliberations in Cabinet (section 24); documents relating to defence and security (section 25); documents relating to the conduct of international relations (section 26); documents relating to the internal working of government (section 27); and documents relating to law enforcement (section 28). By contrast, a court is not well-placed in terms of knowledge and expertise and does not have the democratic legitimacy to assess such matters. This again strongly indicates that its approach when adjudicating on a challenge to a decision made by a public authority should be one of review rather than an objective approach according to which it substitutes its own view of the public interest.

56. Fourthly, and reinforcing the points above, section 22(1) (para 9 above) identifies the persons who may act on behalf of a public authority in deciding whether to disclose a document at a very senior level: "the responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer", among others. It is not plausible to suppose that Parliament intended that a review court should be entitled simply to substitute its own view of the public interest for that of such senior decision-makers who Parliament contemplated would or might be involved in making the relevant decision.

57. Fifthly, section 23 (para 10 above) provides that where a public authority decides to refuse to disclose a document it shall give a notice which states its findings and "the reasons for the decision". This indicates that on judicial review of the decision under section 39(1) it is the adequacy of those reasons (ie the reasons of the public authority) which is the subject of the review by the court, rather than it being for the court simply to substitute its own decision and reasons.

58. Finally, where a complaint about non-disclosure of a document by a public authority is made to the Ombudsman under section 38A of FOIA (para 13 above) and the

Ombudsman makes recommendations about disclosure, section 38A(3) provides that the authority is required to consider them "and, to such extent as it thinks fit, exercise its discretion in giving effect to the recommendations". The fact that the drafter describes the public authority as having a discretion regarding disclosure of documents again indicates that it is the ordinary public law approach to judicial review of discretionary decisions by public bodies which should be applied.

*(d) The requirement to give reasons under section 23*

59. Where a public authority decides to refuse to give disclosure of a document which has been requested, it is required to give a notice which, among other things, states "the reasons for the decision": section 23(1)(a) (para 10 above). The standard for assessment of the adequacy of the reasons is the usual public law standard applicable in such cases, as explained in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33; [2004] 1 WLR 1953, para 36:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. … Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

*(e) The decision of the judge*

60. Although the judge rightly adopted a review approach, she erred in applying it. There plainly were public interest factors pointing in favour of disclosure of the documents in categories 1, 4, 8 and 12, as identified by the appellant in the 18 December

request and by all members of the Court of Appeal and as referred to in para 42 above. The judge was wrong to say that there were no such factors. The Court of Appeal were right to criticise the judge's reasoning on those grounds and to proceed to make their own assessment, following a review approach.

*(f) The determination of this appeal*

61. The Board agrees with the reasoning of the majority in the Court of Appeal in the main part of the lead judgment of Rajkumar JA: para 36 above. The 6 February response by NGC has to be read in the context of the 18 December request, to which it was replying. The Board agrees with para 83 of the judgment of Rajkumar JA (para 36 above). Two features of the case are significant.

62. First, the 18 December request set out in detail the public interest factors which pointed in favour of disclosure of the documents in issue. The 6 February response did not take issue with anything that was said by the appellant in that regard. It proceeded on the footing that the public interest factors relied on by the appellant were indeed present and had validity, but explained why in the view of NGC those factors were outweighed by important public interest factors pointing against disclosure. The 6 February response stated in terms that the balancing exercise under section 35 had been carried out, and the Board considers that in the context of this exchange of correspondence the meaning of what that involved is clear. The requisite balancing exercise had been carried out by the decision-maker who was identified (Mr Loquan); it had involved weighing the public interest factors identified by the appellant in the 18 December request against the public interest factors set out in the 6 February response; the conclusion had been that the latter factors outweighed the former.

63. NGC was entitled to proceed to consider the public interest factors in this way, particularly in view of the appellant's own experience and self-presentation in the 18 December request as a leading defender of the public interest in matters of the kind referred to in that request and having regard to the detailed account of the public interest factors in favour of disclosure set out in it.

64. Secondly, the appellant has at no stage identified any other material public interest factors pointing in favour of disclosure of the documents in question which NGC ought to have taken into account. Nor did Boodoosingh JA identify any in his judgment in the Court of Appeal. Accordingly, it can be seen from the 18 December request and the 6 February response read together that NGC addressed the public interest balancing exercise by taking into account all relevant public interest factors on each side.

65. Applying a review approach, as is appropriate, the Board agrees with the majority in the Court of Appeal that it cannot be said that in the circumstances of this case the

decision arrived at by NGC after taking all the relevant factors into account was irrational or unlawful in any way.

66. The Board considers that, reading the reasons given in the 6 February response for the decision to refuse disclosure of the documents in the light of the 18 December request, as it is appropriate to do, those reasons satisfy the standard required according to the test set out in the *Porter* case (para 59 above). The 6 February response referred in terms to the exemptions being relied on, which was a sufficient explanation in the circumstances that NGC was relying on the public interest factors against disclosure which are reflected in the formulation of the exemptions. Mr Ramlogan submitted that NGC should have said more to explain why it considered that those factors outweighed the factors in favour of disclosure relied on by the appellant, but in the opinion of the Board NGC said enough to allow the reader of the 18 December request and the 6 February response to understand NGC's reasons for refusal. The 6 February response gave a sufficiently clear explanation of this, including by making several references to the balancing exercise under section 35.

67. The Board does not find it necessary to consider whether, if it had come to a different view about the validity of the reasoning set out in the 6 February response, any problem or defect in that regard could have been cured by reference to the affidavits of Mr Look Kin and Ms Quan-Vie.

68. The Board would however emphasise that its decision on this appeal depends on the particular facts in this case. It is not every case in which an applicant for disclosure of documents under FOIA will set out so fully the public interest factors pointing in favour of disclosure. There is no obligation on an applicant to do so. Where he or she does not set out any factors, or sets out only some factors and the public authority is on notice of other factors which ought to be taken into account in the balancing exercise under section 35, it will be incumbent on the public authority to consider what public interest factors are in play on both sides of the issue of disclosure and to take them all into account.

69. However, FOIA has to be interpreted and applied in a context in which Parliament is aware that the resources of public authorities are constrained and are likely to be under pressure from many directions. It is very easy and straightforward for members of the public to make requests for information pursuant to FOIA. There may be a substantial number of them. They should be capable of being dealt with promptly. Parliament clearly did not intend that the obligation on a public authority in dealing with such requests should be excessively onerous so as to absorb an undue amount of the resources available to that authority. Rather, Parliament clearly intended that the obligation of consideration, whilst demanding and not to be satisfied by a perfunctory assessment, should be one within reasonable bounds.

70. Usual public law standards will apply in relation to the identification of the public interest factors in issue. Depending on the context, a public authority may have a degree of discretion in deciding what factors are relevant and to be taken into account: compare *R (Friends of the Earth Ltd and others) v Heathrow Airport Ltd* [2020] UKSC 52; [2021] PTSR 190, paras 116–121. The extent to which the public authority has to pursue lines of inquiry about relevant matters is governed by the rationality standard: see *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1065B (Lord Diplock); *R (Khatun) v Newham London Borough Council* [2004] EWCA Civ 55; [2005] QB 37, paras 35–36 (Laws LJ).

71. Accordingly, the Board does not accept Mr Ramlogan's submission to the effect that a public authority has to imagine every possible aspect of the public interest which might bear on the question of disclosure and consider that as part of the balancing exercise, on pain of being caught out if the applicant for disclosure comes along later and points to some other public interest matter which was not obvious and was not considered by the public authority when it took its decision. To adopt such an approach would make a public authority's obligation of consideration under section 35 excessively onerous, contrary to Parliament's intention. It would also turn FOIA into a bear trap for public authorities and encourage undue amounts of litigation around what is supposed to be a straightforward and easy to apply regime.

*Conclusion*

72. For the reasons given above, the Board dismisses the appeal.