

FOI commissioner selection under way

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A panel will be appointed to aid in selecting the person who will ultimately decide what government information is available to the public in the Cayman Islands.

Cabinet has approved regulations that allow Governor Stuart Jack to appoint up to five members for the information commissioner selection committee, including at least one member of the political opposition, and at least one member of the general public.

The position of information commissioner was created in the Freedom of Information Law (2007). The commissioner will act as an arbitrator in cases where the release of information is disputed by government departments.

Those seeking the job can either apply themselves or be nominated by someone else. Those who hold elected office, are employed by political parties, or who work in local government may not apply for the position unless they agree to resign if they are appointed as the commissioner.

The Freedom of Information Law is due to come into effect in January 2009, and will allow anyone the ability to request records held by the government. Certain records will be held for various reasons including if their release would compromise national security, criminal investigations or trade secrets.

The Information Commissioner's position will vary slightly compared to the two other independent oversight officers appointed by the governor.

The auditor general and the complaints commissioner can be removed from office before the expiration of their terms only by the governor acting in his sole discretion. The Information Commissioner can be removed by the Cabinet, which is made up of a majority of elected ministers.

Both Auditor General Dan Duguay and Complaints Commissioner John Epp have said in the past that giving Cabinet the power to terminate the Information Commissioner's appointment would bring politics into play when the commissioner makes controversial rulings on releasing government records.

"You have to make sure that the incumbents feel comfortable to make comments that they need to make and you're trying to provide them with that assurance that they won't be dismissed if somebody disagrees with their point of view," Mr. Duguay said.

"That's important for all of those positions," he said, referring to the Auditor General, Complaints Commissioner, and Information Commissioner.

"Making provision for removal by the Governor in his sole discretion bolsters the independence of the office of Information Commissioner," said Complaints Commissioner John Epp. "But it is not the only acceptable model to use."

For instance, Mr. Epp said leaving the decision to terminate an independent official's appointment in the hands of the entire Legislative Assembly on the basis of a two-thirds or three-quarters majority vote of the members would be one option.

Also, Mr. Duguay and Mr. Epp said the Governor would clearly consult with Cabinet ministers on all major appointments in any case.

“We’re talking about subtle distinctions,” Mr. Duguay said.

“But I do feel that it’s better that (the decision to terminate an independent official’s appointment) is by the governor because that removes it as much as possible from the political process.”

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