

Friday 17th February 2017

Mr. Frank Barnes
Chief Executive Officer
Urban Development Corporation of Trinidad and Tobago
38-40 Sackville Street
Port of Spain

Attn: Ms Tamica Charles-Phillip

Dear Ms Charles-Phillip

Re: Request for Access to Official Document(s) Under the Freedom of Information Act, 1999

Reference is made to correspondence received from your office on February 6th 2017. First of all we would like to thank you for your response to our correspondence dated December 20th 2016. However we have difficulty in reconciling this response with your first response to us in relation to our Freedom of Information request dated November 25th 2016.

As you would recall Disclosure Today submitted three (3) requests for access to official documents pursuant to the Freedom of Information Act Chap 22:02 (“the Act”) to the Urban Development Corporation of Trinidad and Tobago Limited (UDeCOTT) on October 27th 2016. The first request sought access to a copy of the Management Contracts/Agreements between the Government of Trinidad and Tobago and the Hyatt Hotels Corporation for the management of the Hyatt Regency Hotel in Port of Spain. The second and third requests sought information in relation to the management of those contracts.

Via your initial response to this request dated November 25th 2016, you provided some information in respect of one of our requests, namely “2.1 were competing bids invited or received before selection of the management operating party?”. However in respect of all other requested information you indicated as follows:

- i. That save and except for request 2.1 by virtue of Sections 31 and 33 (1)(d) of the Act, the remaining requests are exempt from disclosure as the information has been acquired from a business and commercial undertaking that relates to trade secrets and matters of a business, commercial and/or financial nature and disclosure would cause substantial harm to the undertaking and expose it to competitive disadvantage;
- ii. That the documents contain information obtained by UDeCOTT from a third party who has consistently treated it as confidential. Should this information be disclosed to a competitor of the third party, it would be likely to prejudice the lawful commercial or professional activities of the third party;
- iii. That, after careful consideration of section 35 of the Act, there is no reasonable evidence in UDeCOTT’s possession that any of the circumstances set out in section 35 of the Act exist, that being:
 - a. abuse of authority or neglect in the performance of official duties; or

- b. injustice to an individual; or
- c. danger to the health or safety of an individual or of the public; or
- d. unauthorized use of public funds.

By letter dated December 20th 2016 Disclosure Today responded to UDeCOTT and requested that this initial denial of our request be reviewed in light of the following:

- i. Based on the information in the public domain, the Hyatt Regency based in Port of Spain was built by the Government of the Republic of Trinidad and Tobago (hereinafter referred to as “Trinidad and Tobago”) and is owned by Trinidad and Tobago. Accordingly information relating to its profitability and other management information included in our requests, barring any overriding public interest to withhold, should be accessible by the citizens of Trinidad and Tobago.
- ii. While we respect the nature of confidentiality clauses and trade secrets in the sphere of Private Enterprise, in this case what is being dealt with is an asset that was constructed with public monies and is owned by the people of the Republic of Trinidad and Tobago through a State Enterprise. As such, we submitted that a higher threshold should exist in that accountability of public monies and public assets.
- iii. You are a State Enterprise and therefore are accountable to Corporation Sole, pursuant to the State Enterprises Performance Monitoring Manual, as well as to the citizens of the country via the Public Accounts Enterprises Committee of the Parliament of Trinidad and Tobago.
- iv. Section 23(1)(a) of the Act provides that the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall “state the findings on any material fact, referring to the material on which those findings were based, and the reasons for the decision”.
- v. Public Authorities ought to set out full particulars of their reasons and the factual basis for refusing to provide information requested pursuant to the provisions of the Act, rather than repeat the grounds as outlined in the Act.
- vi. We drew your attention to section 35 of the Act, in particular its second limb, which is highlighted for ease of reference i.e. : *“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; (b) injustice to an individual; or (c) danger to the health or safety of an individual or of the public; or (d) unauthorized use of public funds, has or is likely to have occurred **or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so**”*.
- vii. We also submitted that you failed to fulfil your obligations under sections 23 and 35 of the Act.
- viii. We further requested that given the reasons outlined, you reassess the position to deny the requests made.
- ix. We also requested that if your decision to refuse to provide the information and copies of documents contained in the requests stood then my client asked that you kindly indicate the process in making the decisions and the rationale.

On February 6th 2017, Disclosure Today received correspondence in reply to our letter mentioned above. In this correspondence you indicated that:

- i. With respect to our first request for copies of the Management/Contracts Agreements, UDeCOTT cannot grant access to any or all of the Management Contracts/Agreements between GORTT and the Hyatt Hotels Corporation for the Hyatt Regency in Port of Spain

Trinidad because UDeCOTT is not in possession of any such Contract/Agreements between those parties. Accordingly, your request is refused on that basis.

- ii. All our additional requests are for information and not a document and that these requests needs clarification because it is not clear to what Management Agreement you refer.
- iii. In accordance with Section 14(2) of the Act and in consultation with UDeCOTT, you are kindly requested to provide additional information with a view of clarifying your request.

While we appreciate the invitation by your organisation to clarify our request we are bit confused since your initial response of 25th November 2016, gave no indication that your organisation did not have the requested documents in your possession. In fact in reading that response one can only assume that you did indeed have the document and reviewed its' contents along with the provisions of the Act and in your opinion decided that our requests were exempted under the Act, even after consideration was given to Section 35.

Given that you are now claiming not to be in possession of the requested document, your response of 6th February 2017 appears contradictory.

That being said, Disclosure Today works to increase transparency on all matters of public interest. We expressly eschew an adversarial approach in favour of a collaborative one with public authorities in service of the public interest. Accordingly, for the avoidance of doubt and in the interests of avoiding unnecessary litigation, please accept the following clarification of our request.

Management Contract/Agreement

Disclosure Today is requesting any and all copies of Hotel Management Contracts/Agreements relating to the Hyatt Regency Hotel, Trinidad and Tobago. That/those agreements would be in respect of management and operation of the Hyatt Regency Hotel in POS, between the Government of Trinidad & Tobago (and/or its subsidiaries or agencies charged with such responsibility) and Hyatt Hotels Corporation (and/or its subsidiaries or agencies) - in any case, we are requesting the agreement to which you referred in preparing your reply of 25th November 2016.

Additional Information (2.1 to 2.10 and 3.1 to 3.9)

With regards to our second request (numbered 2.1 to 2.10) and third request (numbered 3.1 to 3.9) in your response of February 6th 2017, Disclosure Today is seeking information contained either in the said Hotel Management Agreement (mentioned in the paragraph above) or in any other subsequent document that UDeCOTT has in its possession in relation to the performance of the Hyatt Regency Hotel, Port of Spain Trinidad.

One can readily conclude from the several unequivocal, public statements by responsible public officials that analyses are available to UDeCOTT into the operations and performance of the Hyatt Regency Hotel. We are therefore not seeking or requesting UDeCOTT to "create new documents" but rather to provide information from what it already has in its possession, either through the Hotel Management Agreement or other documents which you have in your possession.

It is also important to note that in the last paragraph of your response of February 2017, you indicated that, *"our preliminary view on the matter however, is that documents containing the kind of information requested, if specified, are likely to be exempt under sections 31(1)(b) and 34(1)(d) of the FOIA"*. While you also stated that once clarified consideration would be given to Section 35 of the Act, I would like to bring to your attention Section 3(2) of the Act which states:

“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”.

We thank you for allowing us the opportunity to clarify our request and would like to request a response from your organisation within fourteen (14) days of receipt of this letter.

As always in service of the public interest

Regards

Rishi Maharaj
Chief Executive Officer
Disclosure Today