

Commission of Inquiry
Box 20
Swan Building
26 Victoria Street
Hamilton HM 12
294-0415 or 294-0416
commission@inquirybermuda.com

27th September 2016

By Email

TO: Attorney General
Attorney General's Chambers
Global House
43 Church Street
Hamilton

Attn: The Honourable Trevor Moniz, JP, MP

Dear Attorney General,

Counsel to the Commission have forwarded to me your letter dated 26 September 2016 setting out in accordance with Rule 4 of the Rules of the Commission your grounds for objecting to the disclosure of any documentation or information relating to the LF Wade Airport Redevelopment ("the Airport Project") that is not already in the public domain.

What follows is my ruling as Chairman as required by Rule 4, made after full consultation with my fellow Commissioners.

Your first objection is that the Airport Project is "not within the Commission's Terms of Reference", citing the recent judgment of the Chief Justice in *Bermuda Emissions Control Ltd. vs. the Premier and others (Civil Jurisdiction 2016: No. 322)* where he held that the Commission's "mandate is primarily anchored to the financial years 2010, 2011 and 2012 and the matters addressed in Section 3 of the Auditor General's Report". You also refer to a footnote added by the Chief Justice in which he referred to possible

implications of that remark for the Commission's "evinced intention of investigating the current Airport Project".

There was of course no issue before the Chief Justice as to the Airport Project, or relating to it, and the footnote may have been prompted by some reference made by counsel in the course of their submissions. I am unclear what that reference may have been, but I doubt whether it included what I had previously communicated (in my Opening Statement at the first Public Hearing of 27 June 2016) as the Commission's reason for identifying the Airport Project as a proper subject of its Inquiry. The Commission is required not merely to investigate the three-year period addressed by Section 3 of the Auditor General's Report but also to "consider the adequacy of current safeguards etc." and to "make recommendations to prevent and / or reduce the risk of recurrences of any violation identified" as having occurred during 2010/12 under Articles 7 and 8. The Airport Project we believe is the largest and possibly the only major government capital project that is under negotiation at the present time. We are concerned primarily with possible violations of the correct tendering process for government contracts during the three-year period, but we also have to consider "current safeguards" against violations that we find occurred and to make recommendations for the future. We do not believe that the Chief Justice had this further issue in mind when he added the footnote to his judgment, and we would respectfully agree with him that we are not required to "investigate the current Airport Project" in the same way as if it had been concluded in 2010/12. We seek evidence only as to the tendering process, and I enclose for your convenience the questions that we asked of relevant witnesses on 25 July 2016 and 1 August 2016, and most recently again in our Summonses of 26 September 2016 (attached) after raising the issue with Heads of Department on 28 June 2016.

For those reasons, I must rule against your objection that the questions asked about the Airport Project fall outside the Terms of Reference of the Commission.

You contend secondly that "the documents relating to the Airport Project are protected by public interest immunity", but you do not identify the documents or classes of documents to which that privilege against disclosure might extend. We are currently of the view that no privilege can be claimed for any of the documents which have been requested, limited as they are to the tendering process, which in any event I understand has been the subject of much public debate. If that is incorrect, please identify the

documents or classes of document which you contend are entitled to the privilege. In this connection, I note that the Acting Attorney General (at the press conference he held on Friday 23 September) gave examples of what he contended are privileged documents, which he described as 'contract documents, subject to negotiation'. We do not require and so far as we are aware we have not sought any documents of that kind.

The Commission therefore must maintain its requests for information and documents contained in the Summonses (subpoenas) issued on 20th September 2016. The Commissioners will hear any further submissions or applications you may wish to make at the commencement of the second day of the Public Hearing, that is on 29 September 2016, at St. Theresa's Church Hall, Laffan Street, Hamilton at 10 am. Meanwhile, the times and places for appearance under the summonses can remain adjourned for further agreement between the witnesses concerned and the Commission.

Yours sincerely,



SIR ANTHONY H.M. EVANS
CHAIRMAN, COMMISSION OF INQUIRY

Cc: Gregory Howard, Attorney General
Narinder Hargun, Conyers Dill and Pearman
Jeffrey Elkinson, Conyers Dill and Pearman
Ben Adamson, Conyers Dill and Pearman