



Decision Notice

Decision 32/2019: Ministry of Health Headquarters

Physician referral letters

Reference no: 25102017-03

Decision date: 19 December 2019

Summary

The Applicant made a request under the Public Access to Information Act (**PATI**) 2010 to the Ministry of Health Headquarters (**Ministry**) seeking copies of all letters from physicians submitted to the Ministry in support of applications for licenses to import controlled drugs containing cannabinoids in accordance with section 12 of the Misuse of Drugs Act 1972 and regulation 4 of the Misuse of Drugs Regulations 1973.

The Ministry refused the Applicant's request as frivolous or vexatious, relying on the administrative ground for refusal in section 16(1)(e).

The Information Commissioner has found that the Ministry was incorrect to rely upon section 16(1)(e) because the request was not frivolous or vexatious. The Information Commissioner has varied the Ministry's internal review decision to deny the request in accordance with section 23(1) (personal information).

This review is related to two prior decisions, Decision 30/2019 and Decision 31/2019, involving related PATI requests and should be read together with those Decisions.

Relevant statutory provisions

Public Access to Information (**PATI**) Act 2010: section 2 (purpose); section 12 (access to records); and section 16(1)(e) (frivolous or vexatious requests).

The full text of each statutory provision cited above is reproduced in Appendix 1 to this Decision. The Appendix forms part of this Decision.

Background

1. This review is related to the PATI requests in two prior decisions, Decision 30/2019 and Decision 31/2019, all issued today. The background in the prior decisions are relevant in this current review. Therefore, this Decision should be read together with these related two Decisions.
2. On 10 October 2017, the Applicant submitted a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Health Headquarters (**Ministry**). The cover email with the request stated:

I have attempted to address the confidentiality and 'creation of a new record' concerns that your office raised in relation to my previous two PATI applications.

3. The PATI request stated:

The Ministry of Health and Seniors' "APPLICATION for importation controlled drugs" form states, "For imports of more than a seven day supply, a letter from a Local Registered Physician indicating approval of the use of the product should accompany this application." I would like to request copies of all 'letter[s] from a Local Registered Physician' that have been submitted to the Ministry of Health and Seniors in relation to any product containing cannabinoids. Where redaction of the physician's name is necessary, I would like to request that the following be inserted directly above or below the redaction: 1. A letter code (i.e. A, B, C, etc.). In cases where a physician has support multiple applications, please use the same letter code and 2. The physician's area of practice.

- If the letter makes reference to a diagnosis, please leave this unredacted
- If the letter contains a reference to the physician's area of practice, please leave this unredacted
- If the letter contains a PIL reference number, please leave that reference number unredacted
- If a PIL reference number appears on any document (or file jacket, file label, etc.) attached to (or otherwise associated with) that application, please provide me with a scanned copy of the document showing the PIL number. All other information on that document may be redacted. In the event that the PIL number appears in more than one place in the application, there is no need to provide more than one copy of the number.

4. On 24 October 2017, the head of the Ministry notified the Applicant that this PATI request was refused in accordance with section 16(1)(e) because it was frivolous or vexatious.

Investigation

5. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request to a public authority. Because the Ministry's decision was made by the head of the public authority and the intention of both parties was for the Information Commissioner to issue a decision on this matter, the Information Commissioner deemed that an internal review request to the Ministry and a referral from the Ministry to the Information Commissioner to have taken place in accordance with section 44 of the PATI Act. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
6. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Ministry to determine whether it had justified its denial of the request as frivolous or vexatious.
7. The Information Commissioner notified the Ministry that the Applicant had made a valid application.
8. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties to the review a reasonable opportunity to make representations. The ICO invited the Applicant and the Ministry to comment on this application, and to make submissions to the Information Commissioner for consideration in this review. The Ministry was asked specific questions to justify its denial of the PATI request as frivolous or vexatious in accordance with section 16(1)(e). Both the Applicant and the Ministry made submissions.

Information Commissioner's analysis and findings

9. In coming to a decision on this matter, the Information Commissioner considered all of the relevant submissions, or parts of submissions, made by the Applicant and the Ministry. She is satisfied that no matter of relevance has been overlooked.

Frivolous or vexatious – section 16(1)(e)

10. Section 16(1)(a) allows public authorities to refuse a PATI request if “the request is, in the opinion of the head of the authority, frivolous or vexatious”.
11. ‘Frivolous or vexatious’ is not defined in the PATI Act or in the PATI Regulations 2014. In such circumstances, the Information Commissioner normally applies the ordinary meaning of the words, i.e., the dictionary definition. Most jurisdictions with similar

provisions, however, have cautioned against the use of the dictionary definition of ‘frivolous’ and ‘vexatious’ for the purpose of applying the provision in the context of access to information¹.

12. The Oxford English Dictionary defines ‘frivolous’ in its non-legal sense as “of little or no weight, value or importance; paltry, trumpery, not worthy of serious attention; having no reasonable ground or purpose”. It defines vexatious (in its non-legal sense) as “causing, tending or disposed to cause, vexation”.
13. The primary reason for cautioning against the use of the dictionary definitions is that the definition of ‘frivolous’ can depend on the circumstances of the requester. Thus, a request which is of little importance to one requester can be of vital concern to another.
14. The PATI Act makes clear in section 12(3) that a requester is not required to share any reasons for making a request. Furthermore, when read in the context of the purposes of the PATI Act—to give the public the right to obtain access to information held by public authorities to the greatest extent possible, within the provisions of the PATI Act—it appears incompatible with the PATI Act to permit public authorities to refuse a request on the grounds that the request is, in the opinion of the head of the authority, of little or no value.
15. In the context of the definition of ‘vexatious’, many public bodies are likely to find requests annoying in one way or another, but this does not, in itself, constitute a ground to refuse the request.
16. Another approach to interpreting the words ‘frivolous or vexatious’ is to treat the phrase as synonymous with the expressions as they are used in legal contexts, in particular in Order 18, Rule 19(1) of the Bermuda Rules of the Supreme Court 1985 and the court’s inherent jurisdiction to strike out a legal claim. The Court of Appeal for Bermuda considered the meaning of the term ‘frivolous or vexatious’ in Performing Arts Society v Bermuda Cablevision Ltd. [1997] Bda LR 33, stating “it is pertinent to mention that the words ‘frivolous or vexatious’ mean cases which are obviously frivolous or vexatious or obviously unsustainable”. The Supreme Court has also considered the

¹ See, e.g., Ireland Guidance Note, Freedom of Information Act 2014 Section 15(1)(g) – Frivolous or Vexatious, para. 2.4.2, available at [https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-15\(1\)\(g\)-Guidance-Note.pdf](https://www.oic.ie/guidance-and-resources/guidance-notes/1-Section-15(1)(g)-Guidance-Note.pdf); UK Guidance, Dealing with vexatious requests, para. 16, available at <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>.

meaning to be “so clearly frivolous that to put it forward would be an abuse of the process of the Court”².

17. The Oxford English Dictionary defines the words, in their legal sense, as “Frivolous: (in relation to a pleading) manifestly insufficient or futile; Vexatious: (in relation to legal actions) instituted without sufficient grounds for the purpose of causing trouble or annoyance to the defendant”.
18. The Information Commissioner considers that the legal definition, and in particular, the concepts of ‘obvious unsustainability’, and ‘sufficiency of grounds’ are not compatible with the statutory scheme of the PATI Act, under which a public authority is obligated to grant a request for public access unless the record is exempt and, further, that a requester is not required to provide reasons for the request or to justify their right to access the public records.
19. The Information Commissioner draws some guidance, however, from the connection drawn by the Courts between ‘frivolous or vexatious’ and the concept of abuse of process. This connection is fortified by the fact that the approach adopted by other jurisdictions, including Ireland and Ontario, Canada, is that the provisions on ‘frivolous or vexatious’ are aimed at abuses of the processes set out in the respective legislation³.
20. The Irish Information Commissioner has reached a similar conclusion with respect to the application of the legal definition of ‘frivolous or vexatious’, which the Information Commissioner finds persuasive⁴.
21. The first point made by the Irish Information Commissioner in its decisions on whether a request is ‘frivolous or vexatious’ is that, given the substantial impact it may have on a requester’s right to access public information, the discretionary power to refuse a request on these grounds should not be exercised lightly.
22. Second, the Irish Information Commissioner has found that it is appropriate to concentrate on the concept of abuse of process or evidence of bad faith and to look at

² See Krebs v Meritus Trust Company Ltd [2018] Bda LR 91 at para. 20.

³ See Case 99151, Mr ABW and the Department of Enterprise, Trade and Employment, available at <https://www.oic.ie/decisions/d99151-Mr-ABW-and-the-Department-of/index.xml>), which discusses the Ontario case law.

⁴ See Case 99151, *ibid*. The Information Commissioner also notes that the provision in the Irish Freedom of Information Act 1997 (section 10(1)(e)) is identical to the provision in section 16(1)(e) of the PATI Act. Note that section 10(1)(e) of the Irish Freedom of Information Act 1997 was revised and the revised version of the provision can be found in section 15(1)(g) of the Irish Freedom of Information Act 2014.

the provision in the context of the purposes of the Act. As stated by the Irish Information Commissioner:

In short, the Act demands that public bodies meet very high standards in dealing with requests. This is as it should be; but the corollary is that the legislation assumes reasonable behaviour on the part of requesters. It could hardly have been the intention of the Act that a public body be required to go through the rigorous processing requirements of the Act in cases where the requester makes no effort to co-operate with the reasonable requirements of the public body. More particularly, it seems to me that certain patterns of conduct by requesters and attempts by requesters to circumvent the provisions of the Act can constitute an abuse of process of making an [access to information] request and that such requests may be refused on the grounds that they are frivolous or vexatious⁵.

23. The PATI Act places similarly high demands and imposes strict requirements on public authorities when handling requests, such that reasonable behaviour on the part of the requesters is expected.
24. In light of the statutory scheme of the PATI Act, and guidance drawn from the Court's definitions of 'frivolous and vexatious', as well as guidance from other jurisdictions with similar legislative frameworks, the Information Commissioner understands section 16(1)(e) to be aimed at preventing abuses by requesters of the processes set out under the PATI Act. This will include when a requester makes a request in bad faith, or when the requester's pattern of conduct is such that it amounts to an abuse of process.

Requests made in bad faith

25. A request is made in bad faith when it is not made as a result of bad judgment or negligence, but rather it is made with an illegitimate or dishonest purpose. No pattern of conduct is required. It is different from negligence in that it requires a state of mind affirmatively operating with furtive design or will. The fact that a requester is unwilling to cooperate with a public authority may be evidence of bad faith on the part of a requester.

⁵ See Case 99151, *ibid.*

26. The Information Commissioner notes, however, that simply because it is clear that a requester may use the information obtained in a manner which may be disadvantageous to the public authority does not imply that the request is made in bad faith.

Pattern of conduct

27. A pattern of conduct requires recurring incidents of related or similar requests on the part of the requester. The time over which the behaviour is committed is also a relevant factor⁶.

28. The fact that a pattern of conduct exists is not, of itself, sufficient. The pattern of conduct must be such that there is an abuse of process or an abuse of the right of access.

29. The following is a non-exhaustive list of relevant factors which may be considered in determining whether a pattern of conduct amounts to an abuse of the right of access:

- a. The actual number of requests and appeals filed: This includes considering whether they are excessive by reasonable standards. The fact that a requester has submitted a large number of requests does not, of itself, indicate that any of the requests are frivolous or vexatious. This is because what constitutes a 'large' number of requests is so subjective as to be of little value, in practice, in determining whether section 16(1)(e) might apply. Furthermore, the number of requests received by a public authority must depend in part on its approach to the release of public information.

While a large number of requests of itself need not be an indication of abuse, if the number of requests made by one requester at or about the same time or in close succession is so great that no public body could possibly be expected to deal with them properly, i.e., in accordance with the strict requirements imposed by the PATI Act, then this may indicate that the request is frivolous or vexatious.

- b. The nature and scope of the requests: Public authorities may consider, for example, whether the requests are excessively broad and varied in scope or unusually detailed.

⁶ See, e.g., Case 020375, Mr X and RTE, available at <https://www.oic.ie/decisions/d020375-020376-020647-020648-020649/>.

- c. Whether the process was used more than once for the purpose of revisiting an issue which was previously addressed?
 - d. The purpose of the requests: This includes considering, for example, whether the requests (a) have been submitted for their 'nuisance' value, (b) are made without reasonable or legitimate grounds, and/or (c) are intended to accomplish some objective unrelated to the public access process.
 - e. The sequencing of the requests: Does the volume of requests or appeals increase following the initiation of court proceedings or the institution or the occurrence of some other related event?
 - f. The intent of the requester: Is the requester's aim to harass government or to break or burden the system?
30. The outcome or cumulative effect of the requests is also a relevant consideration. It is appropriate to consider the requests concerned in the context of other requests made to the public authority and in the context of the requester's other dealings with the public authority concerned.
31. In sum, a request will be frivolous or vexatious when it is:
- a. made in bad faith, or
 - b. forms part of a pattern of conduct that amounts to an abuse of process.
32. As with other exemptions, when a request for access is refused by a public authority, the burden is on the public authority to justify its refusal. The public authority, therefore, bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify an administrative denial in accordance with section 16(1)(e) because the request is frivolous or vexatious.

Public authority's submissions

33. The Ministry understood the Applicant's request to be asking for all submitted letters from physicians as part of patients' controlled drug applications for cannabidiol (CBD)-containing products. The specific information the Applicant sought in the record is the physicians' names (to be replaced by a letter code), the physicians' area of practice (if present), the medical diagnosis, and the reference number associated with the application.
34. The Ministry submitted that the Applicant's request was the seventeenth request submitted by the Applicant for similar information, and the third request for practically

the same information. The Ministry submitted that in making its decision, it took into account the impact the volume of requests had upon the authority and the Information Officers.

35. The Ministry confirmed that it assessed the request to determine the value of the responsive records to the Applicant and to the wider public interest in the records. The Ministry also pointed out that amendments to the relevant legislation, effective on 24 November 2017, eliminated the need for a physician's referral in support of importation of medical cannabis.
36. The Ministry also provided the ICO with a copy of the report from its PATI requests tracking system showing the number of requests it received for the period from 21 April 2015 to 15 February 2017, and a spreadsheet listing the sixteen other requests the Applicant made during the period from 22 March 2016 to 1 September 2017.
37. The Ministry argued that seventeen requests, with three for the same information, cannot be seen as justified because full explanations for the responses had already been provided at length.
38. The Ministry further argued that the Applicant's volume of requests and persistence, despite being given all available answers that could be disclosed, was frivolous or vexatious. The Ministry stated that it was not necessary to discuss the Ministry's concerns regarding the present PATI request with the Applicant because it was the third request for the same information and the Applicant's request was very clear.

Applicant's submissions

39. With respect to the request being vexatious, the Applicant explained that the request was an attempt to address the Ministry's concerns upon which the refusal of the prior two related PATI requests were based. The Information Commissioner notes that the refusal of the related PATI requests are the subject of Decisions 30/2019 and 31/2019.
40. In the submissions, the Applicant explained that the purpose of the PATI requests was to inform one chapter of a non-governmental report on Bermuda's drug policy, which deals with the section 12/regulation 4 application process for importing medical cannabis. The objectives of the chapter were to identify the strengths and weaknesses of the application process. The Applicant stated that the Applicant's research had identified inconsistencies between statements by the Ministry of Health, the Ministry of National Security, and members of the public regarding the application process.

41. The purpose of the PATI request was to enable the Applicant to evaluate those inconsistencies. The Applicant asserted that key evidence was not in the public domain but exists in the records of the Office of the Chief Medical Officer and the Ministry of National Security, and in the Applicant's estimate, could be found in eleven or so files.

Discussion

42. The Ministry has not asserted that the Applicant's PATI request was made in bad faith, e.g., for an illegitimate or dishonest purposes. Nor has the Ministry claimed that the Applicant has refused to cooperate with the Ministry.

43. The Information Commissioner, therefore, considers only the Ministry's arguments that the Applicant's pattern of conduct amounts to an abuse of process. The Information Commissioner assesses the relevant factors in turn.

The actual number of requests filed

44. The Ministry provided the ICO with a log summarising the requests received from the Applicant, along with the time since the Applicant's last request.

45. The list of requests show that the seventeen requests were made over a period of approximately eighteen months, between March 2016 and October 2017. Apart from a group of requests for which all but one sought emails containing specific keywords), the requests were submitted one to several months apart. On the face of it, the Information Commissioner is of the view that the actual number of requests is not excessive.

The nature and scope of the requests

46. The Ministry made specific submissions regarding the nature and scope of the PATI requests. In particular, the Ministry submitted that the requests were repetitive and that this current PATI request, specifically, was used to revisit an issue which had previously been addressed. The Ministry asserted that full explanations for the responses to the earlier requests had already been provided at length.

47. The Ministry provided the ICO with copies of email communications concerning:

- a. Correspondence between the Applicant and Ministry during the processing of the second-related PATI request (discussed in Decision 31/2019), including the Ministry's queries about the request and the Applicant's responses;

- b. an email from the Applicant to the Ministry dated 6 October 2017, following refusal of the Applicant's two prior PATI requests (discussed in Decisions 30/2019 and 31/2019), seeking assistance with respect to the specific information sought and how the Applicant may obtain that information without intruding on the confidentiality concerns previously raised by the Ministry; and
 - c. the Ministry's response dated 7 October 2017, providing the Applicant with some information that was responsive to the previous requests, but advising him to seek the information by way of a survey of local doctors.
48. The Ministry asserted that the seventeen requests were for similar information and that the current PATI request was the third request for practically the same information. As is clear from the analysis of the requests set forth above, however, this is not the case. The previous requests made by the Applicant, although they all related to the regulation of medical cannabis in Bermuda, were requests for different information and different types of records held by the Ministry.
49. The Ministry also asserted that the current PATI request was an attempt to revisit an issue that had already been decided. The Information Commissioner has carefully reviewed the email correspondence provided by the parties. It is clear from this correspondence, and from the submissions by the Applicant, that both the second and third related PATI requests were an attempt to address the concerns raised by the Ministry's refusals in relation to the Applicant's initial request. Under these circumstances, the Information Commissioner is satisfied that the nature of the Applicant's requests were justified attempts to address the concerns regarding confidentiality and the non-existence of the records raised by the Ministry⁷.
50. Furthermore, in this case, it is apparent from the email correspondence that the Ministry had not dealt with the earlier requests appropriately. See Decision 31/2019. The UK Upper Tribunal has held that, in such cases, this will "militate against holding the most recent request to be vexatious"⁸.
51. Lastly, it is apparent from the Ministry's email to the Applicant on 7 October 2017 that the Applicant's PATI requests were not excessively broad or varied in scope or unusually detailed. The Ministry stated that there were only six physicians that had referred patients under the section 12/regulation 4 application process. Additionally, the

⁷ See William Thackeray v The Information Commissioner EA/2011/0082 & 0083, FTI on justified perseverance by an Applicant.

⁸ See Colin Parker v The Information Commissioner [2016] UKUT 0427 (AAC) at paragraph 25.

Ministry supplied application files pertaining to twenty licenses (only eight of which contained letters that would be responsive to the PATI request). It is clear, therefore, that the Applicant's PATI request is not excessively broad or varied in scope or unusually detailed.

The purpose of the requests

52. The Applicant had made clear throughout the Applicant's submissions, correspondence with the ICO, and correspondence with the Ministry that the purpose of the PATI request was to evaluate inconsistencies between public statements by the Ministry of Health, the Ministry of National Security, and members of the public concerning the section 12/regulation 4 application process for licenses to import medical cannabis. The evaluation is meant to form part of a chapter of a non-governmental report being drafted by the Applicant on Bermuda's drug policy.
53. There is no evidence that the PATI requests have been submitted for their nuisance value or that they are intended to accomplish some objective unrelated to access. The Information Commissioner is satisfied that the requests were made with reasonable and legitimate grounds and there is no evidence to the contrary.

The sequencing of events

54. There is no evidence that the Applicant's PATI requests were related to the occurrence of some other event, such as the initiation of court proceedings. The Information Commissioner is satisfied that the sequencing of the requests is not a factor for consideration in this case.

Intent of the requester

55. The Ministry was invited to comment on the motive behind the Applicant's requests. The Ministry's response indicated that the Ministry was not aware of any motive, and that the Ministry could only know the Applicant's actions and their impact. The Ministry did not provide any evidence that would indicate a malevolent purpose or intent on the part of the Applicant.
56. The Applicant submitted that the intention when submitting the third and current PATI request was "simply to revise the request in a way that addressed the objections raised in the prior two refusals". The Applicant provided an extensive collection of emails that documented the Applicant's interactions with the Ministry. The Information Commissioner has carefully reviewed these emails and is satisfied that (1) it is clear from the chronology of the correspondence and the PATI requests that the Applicant

was attempting to revise the original PATI request to address the objections raised by the Ministry, and (2) that the emails consisted of respectful enquiries and engagement on issues related to the Applicant's research. There is no evidence of harassment or an uncooperative attitude by the Applicant in the email correspondence provided by the parties.

57. The correspondence shows that the Applicant's aim was to gain access to the information requested in whatever manner possible through the Ministry's records. No evidence exists that the Applicant's aim was to harass the Ministry or burden the Ministry with excessive requests.

Other factors: public interest value

58. Despite the Ministry's submissions to the contrary, there is a public interest value generally in drug regulation and medical cannabis locally, which is evident from parliamentary debate, the survey and report by the Cannabis Reform Committee (CRC), and media reports on the subject. The Applicant's stated purpose for the research is to expand upon the work of the CRC. The request to the Ministry was for records that the Applicant believed would assist with the examination of the application process related to the importation of medicinal cannabis.

59. There is value in subjecting public processes to public scrutiny, even in the absence of complaints or evidence of maladministration, and from a historical perspective when the process is no longer in place. When the public authority is unable to discern or appreciate the value in the purpose of a PATI request, it is not entitled to dismiss the request under section 16(1)(e).

Other factors: burden on the public authority

60. The Ministry pointed to the volume of emails—more than 140 purportedly exchanged between the Applicant and the Ministry—and argued that the volume and persistence were grounds for finding that the request was vexatious. The Applicant provided the ICO with all of the email correspondence between the Applicant and the Ministry between 23 March 2016 and 14 January 2018, which consisted of approximately 160 emails, although this included overlapping email threads.

61. The Information Commissioner has carefully reviewed this correspondence. Only about 25 of the emails provided by the Applicant actually concern the three-related PATI requests involving the section 12/regulation 4 application process between 8 July 2017 and 23 October 2017, a 4½ month period. This includes the standard correspondence, namely the three sets of PATI requests, acknowledgements, internal review requests

and internal review decisions. As a result, there were only thirteen additional email exchanges between the Applicant and Ministry. Most of the emails were queries from the Ministry to the Applicant to clarify the PATI requests and the Applicant's responses. They also include, though, simple 'thank you' emails. The number of emails related to the three PATI requests in question is not excessive and does not constitute grounds for finding that the request was vexatious.

Conclusion

62. The Information Commissioner is not satisfied that the Applicant's PATI request in this review—when viewed in the context of all previous PATI requests by the Applicant, but particularly the two prior PATI requests related to the section 12/regulation 4 applications—was made in bad faith or that the requests formed a pattern of conduct that amounted to an abuse of process or an abuse of the right of access.
63. As found in Decision 31/2019, the Ministry was incorrect to inform the Applicant that responsive records do not exist when, in fact, they did but are exempt under section 23 (personal information). Consequently, the Applicant continued to attempt to modify his request and submitted multiple PATI requests in an effort to allay the concerns raised by the Ministry in its previous refusals, as the Applicant had previously been invited to do so by the Ministry.
64. Further, the specific information in the records being sought was not voluminous or unreasonable in nature or scope. The Information Commissioner is satisfied that the Applicant was justified in submitting revised PATI requests based on the refusals by the Ministry and the Applicant's request was not frivolous or vexatious.
65. The Information Commissioner does not require the Ministry to take further action in this case, as Decisions 30/2019 and 31/2019 found that the records sought by the Applicant are exempt under personal information exemption in section 23(1).
66. As in Decision 31/2019, paragraphs 46-49, the Information Commissioner encourages the Ministry to be open with its records, including statistical information, when appropriate, in accordance with its duty to assist and the purposes of the PATI Act.

Decision

The Information Commissioner finds that the Ministry of Health Headquarters (**Ministry**) did not comply with Part 3 of the Public Access to Information (**PATI**) Act 2010 when it relied on section 16(1)(e) to administratively deny the Applicant's PATI request because the request was frivolous or vexatious.

In accordance with section 48(1)(a) of the PATI Act, the Information Commissioner varies the Ministry's internal review decision to deny the Applicant's PATI request under section 23(1) because the record is exempt personal information.

Judicial Review

The Applicant, the Ministry, or any party aggrieved by this Decision have the right to seek and apply for judicial review to the Supreme Court according to section 49 of the PATI Act. Any such application must be made within six months of this Decision.



Gitanjali S. Gutierrez
Information Commissioner
19 December 2019

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Purpose

2 The purpose of this Act is to –

- (a) give the public the right to obtain access to information held by public authorities to the greatest extent possible, subject to exceptions that are in the public interest or for protection of the rights of others; . . .

Access to records

12 (1) Subject to this Act, every person who is a Bermudian or a resident of Bermuda has a right to and shall, on request, be given access to any record that is held by a public authority, other than an exempt record.

(2) Public authorities shall make every reasonable effort to –

- (a) assist persons in connection with requests; and
- (b) respond to requests completely, accurately and in a timely manner.

Refusal of request on administrative grounds

16 (1) A public authority may refuse to grant a request if –

. . .

- (e) the request is, in the opinion of the head of the authority, frivolous or vexatious;

. . .

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