

## Decision Notice

---

**Decision 07/2020: Office of the Governor**

---

**Correspondence relating to the Uighurs**

**Reference no: 22032017**

**Decision date: 27 July 2020**

## Summary

---

The Applicant made a request under the Public Access to Information Act (**PATI**) 2010 to the Office of the Governor (**Government House**) for its correspondence with the United Kingdom Foreign and Commonwealth Office (**UK FCO**), the United States authorities (**US authorities**), and the Government of Bermuda (**Bermuda Government**) regarding the four Uighur men who arrived in Bermuda in June 2009.

Government House refused the Applicant's PATI request under the exemptions in sections 32 (national security, defence, and international relations) and 33 (Governor's responsibilities and communications with the UK). During this review, Government House relied on a number of additional exemptions, including the personal information exemption in section 23(1).

The Acting Information Commissioner has found that the PATI Act did not apply to some of the responsive records, in accordance with section 4(1)(b) of the PATI Act. The Acting Information Commissioner has also found that Government House justified its reliance on the exemption in section 32(1)(b) to deny access to its correspondence with the UK FCO and the US authorities responsive to the request. It also justified its reliance on the exemption in section 23(1) to deny access to some of its correspondence with the Bermuda Government.

The Acting Information Commissioner has found that Government House did not justify its reliance on the other exemptions and requires it to disclose some of the records, or parts of the records, in accordance with this Decision and the Confidential Annex.

## Relevant statutory provisions

---

Public Access to Information (**PATI**) Act 2010: section 4 (application); section 21 (public interest test); section 22 (health or safety of individual); section 23 (personal information); section 24 (definition of personal information); section 29 (deliberations of public authorities); section 32 (national security, defence, and international relations); section 33 (Governor's responsibilities and communications with the UK); section 35 (legal professional privilege); section 37 (disclosure prohibited by other legislation).

The full text of each statutory provision cited above is reproduced in Appendix 2 to this Decision. The Appendix forms part of this Decision.

## Background

---

1. This Decision relates to a Public Access to Information (**PATI**) request received by the Office of the Governor (**Government House**) for records regarding the four former detainees of Guantanamo Bay, of Uighur ethnicity. The Uighur men arrived in Bermuda in June 2009 and were made British Overseas Territories citizens (**BOTC**) in August 2018.
2. Prior to the decision granting BOTC status to the Uighur men, a PATI request was made on 17 January 2017 asking for Government House's correspondence with the United States authorities (**US authorities**), the United Kingdom Foreign and Commonwealth Office (**UK FCO**), and the Government of Bermuda (**Bermuda Government**), between 1 January 2009 and 17 January 2017, on the Uighur men.
3. Government House refused the request under the exemptions in sections 32 (national security, defence, and international relations) and 33 (Governor's responsibilities and communications with the UK) of the PATI Act. The Applicant subsequently sought an internal review.
4. Government House's internal review decision, dated 14 March 2017, upheld its initial decision in full.
5. The Applicant submitted a timely request for an independent review by the Information Commissioner of Government House's internal review decision.

## Investigation

---

6. The application was accepted as valid. On 12 May 2017, the Information Commissioner notified Government House and the Applicant of her recusal from the review, due to her previous extensive work providing direct legal representation to, and human rights advocacy on behalf of, men detained in Guantanamo Bay. Given the Information Commissioner's recusal, this review has been managed by investigators in the Information Commissioner's Office (**ICO**).
7. The Acting Information Commissioner confirmed that the Applicant had made a PATI request to a public authority and asked the public authority for an internal review. Additionally, the Acting Information Commissioner confirmed the issues the Applicant wanted her to review.

8. The Acting Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from Government House to determine whether its reliance on the exemptions were justified.
9. On 12 May 2017, the ICO notified Government House of the Applicant's valid application.
10. Government House provided the ICO with access to the responsive records, which consisted of over 400 records.
11. During the course of this review, Government House invoked additional exemptions to justify its decision to refuse the PATI request. In addition to the exemptions in sections 32(1) and 33(1), Government House relies on the exemptions in sections 23(1) (personal information), 29(1) (deliberations of public authorities), 35(1) (legal professional privilege), and 37(1) (disclosure prohibited by other legislation). The Acting Information Commissioner accepted the late reliance on new exemptions. The Applicant was notified of the new exemptions.
12. The Uighur men and their families were identified as third parties (**Third Parties**) in this review, because the requested records contain information pertaining to them.
13. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority, applicant, and any third party concerned a reasonable opportunity to make representations. Government House, the Applicant, and the Third Parties were invited to comment on this review and make submissions to the Acting Information Commissioner for consideration. Government House was further asked specific questions to justify its reliance on the exemptions.
14. The ICO received submissions from Government House, the Applicant, and the Third Parties. The Third Parties objected to disclosure and agreed with Government House's reliance on section 23(1) of the PATI Act. The Third Parties also attempted to rely on the exemption in section 22(1) (health or safety of individual). This exemption is not considered in this review, however, because it was not relied upon by Government House, and the Third Parties do not have a right to invoke an exemption that is not listed in section 39(1) of the PATI Act.<sup>1</sup>

---

<sup>1</sup> Section 39(1) of the PATI Act gives third parties a right to provide comments on a public authority's intention to disclose records containing information that might be exempt under sections 23 (personal information), 25 (commercial information), and 26 (information received in confidence) of the PATI Act.

## Acting Information Commissioner's analysis and findings

---

15. In coming to a decision on this matter, the Acting Information Commissioner considered all of the relevant submissions made by the Applicant and Government House. She is satisfied that no matter of relevance has been overlooked.
16. The Acting Information Commissioner strives to provide as full a public explanation of her reasoning and decision as possible. Section 53(2) of the PATI Act, however, prevents discussion of the withheld records. As a result, the analysis below cannot be as detailed as would otherwise be preferred.
17. This Decision will first discuss some of the responsive records which fall outside the scope of the PATI Act (section 4(1)(b)) before discussing the exemptions invoked by Government House. It will then consider Government House's reliance on the exemption in section 37(1), which is not subject to the public interest test. The remaining exemptions invoked by Government House will then be discussed as they relate to the following categories of responsive records:
  - a. Government House's correspondence with the UK FCO or US authorities (**Category A records**), which make up most of the responsive records; and
  - b. Government House's correspondence with the Bermuda Government (**Category B records**).

When discussing each category of records, this Decision will first consider any class-based exemptions<sup>2</sup> that are subject to the public interest test, such as those in section 32(1)(b) for information communicated in confidence by a State, and section 23(1) for personal information. Considerations of any harm-based exemptions will follow where relevant.

### *Preliminary issue – applicability of the PATI Act – section 4(1)(b)*

18. Section 4(1)(b) states that the PATI Act does not apply to records that were obtained or created by specific public authorities while carrying out their functions. The PATI Act would still apply to records that relate to the general administration of these public authorities (section 4(2)(b)).
19. The PATI Act and Regulations do not define 'functions' or 'general administration'. Section 7 of the Interpretation Act 1951 (**Interpretation Act**) defines 'functions' as

---

<sup>2</sup> A class-based exemption applies where the responsive record falls within the type of records described in the exemption. Unlike in a harm-based exemption, for a class-based exemption to apply, public authorities need not show that disclosure could result in any specific harm.

“the powers conferred, or duties imposed, on the authority or officer by or under any provisions of law”.

20. In Decision 02/2019, Office of the Governor, the Information Commissioner has adopted the definition of records relating to ‘general administration’ to include “records which have to do with the management of [a public authority] such as records relating to personnel, pay matters, recruitment, accounts, information technology, accommodation, internal organisation, office procedures and the like”.<sup>3</sup> All public authorities would be expected to hold records that fall within these categories, because they are related to activities that are common to all public authorities.<sup>4</sup>
21. Government House did not invoke section 4(1)(b) to refuse the PATI request or in any of its submissions to the ICO. As has been explained in previous decisions, the Acting Information Commissioner may address the applicability of section 4(1) and the PATI Act to the responsive records even if the parties did not raise them. This is because section 4 goes to the scope and applicability of the PATI Act.
22. For section 4(1)(b) of the PATI Act to apply, the following must be considered:
  - [1] Was the record obtained or created by one of the public authorities listed in section 4(1)(b)?
  - [2] Was it obtained or created in the course of that public authority carrying out its functions?
  - [3] Does the record relate to the general administration of the public authority?

#### *Discussion*

- [1] *Was the record obtained or created by a public authority listed in section 4(1)(b)?*
23. The Acting Information Commissioner is satisfied that six of the responsive records were obtained or created by one of the public authorities listed in section 4(1)(b).
  - [2] *Was it obtained or created in the course of that public authority carrying out its functions?*

---

<sup>3</sup> Decision 02/2019, Office of the Governor, para. 20; Decision 19/2019, Department of Internal Audit, para. 19.

<sup>4</sup> Decision 05/2020, Human Rights Commission, para. 15.

24. After carefully reviewing the six records, the Acting Information Commissioner is satisfied that they were created or obtained by a public authority listed in section 4(1)(b) in the course of carrying its functions.

[3] *Does the record relate to the general administration of the public authority?*

25. The six records do not relate to the general administration of that public authority.

### *Conclusion*

26. The Acting Information Commissioner is satisfied that the six records fall within section 4(1)(b) of the PATI Act and, therefore, the PATI Act is not applicable to those records. This finding is neutral in terms of whether or not a public authority should withhold or disclose such records, however it does mean that the public cannot access such records through the PATI Act.

### ***Disclosure prohibited by other legislation – section 37(1)***

27. Section 37(1) allows public authorities to refuse a PATI request if the disclosure of the records sought “is prohibited by any statutory provision, other than [the PATI] Act.”
28. Section 2 of the Interpretation Act defines ‘statutory provision’ as a provision of any Act or of any statutory instrument. It further defines ‘Act’ as “an Act of the Legislature of Bermuda” and ‘statutory instrument’ as “any proclamation, rule, regulation, order, rule of court, bye-law, notice or other instrument made under or by virtue of any provision of law and having legislative effect”.
29. Save for the limited circumstances set out in section 1(2) which are not relevant in the present case, the Interpretation Act applies to every Act of the Bermuda Legislature and any statutory instruments in Bermuda, including the PATI Act.
30. Section 37(2) of the PATI Act authorises the Minister “by order” to “repeal, revoke or amend any statutory provision referred to in subsection (1)”. The two following subsections clarify that the Minister’s order may also make any consequential or incidental modifications that are needed, as well as contain appropriate transitional and savings provisions (section 37(3)) and is subject to Parliament’s affirmative resolution procedure (section 37(4)). The plain language of section 37(2)-(4) indicates that the statutory provisions at issue fall within the authority of the Bermuda Minister.
31. Based on what is stated in the Interpretation Act, and bearing in mind the Minister’s power discussed above, section 37(1) of the PATI Act refers only to a prohibition on disclosures contained in Bermuda Acts and statutory instruments.

32. As set out by the Information Commissioner in her earlier decisions<sup>5</sup>, to appropriately rely on section 37(1), a public authority must be able to identify or demonstrate the following:

[1] What is the statutory provision creating the mandatory prohibition on disclosure?

[2] Does the record fall within this statutory provision?

[3] Does the record fall within any exception or gateway to public disclosure that is contained in the statutory provision?

*Public authority's submissions*

33. Government House argued that section 37(1) is applicable because disclosure of the responsive records is not permitted under the UK Official Secrets Acts (**OSAs**), which consist of the 1911 OSA (as amended in 1920 and 1939) and the 1989 OSA.
34. Disclosure is prohibited under section 2 of the 1911 OSA. The term “office under His Majesty” is defined in section 12 of the 1911 OSA to include any office or employment in or under any department of the United Kingdom, or of any British possession, which includes Bermuda.
35. Disclosure is also prohibited under section 3 of the 1989 OSA. ‘State’ is defined in section 13(1) of the 1989 OSA to include “the government of a State and any organ of its government”. References to ‘a State other than the United Kingdom’ include references to any territory outside the UK, including the Overseas Territories.
36. The 1989 OSA has not been extended to the Overseas Territories, but its provisions nonetheless bind the Governor and the Deputy Governor as Crown Servants by virtue of section 15(1) of the 1989 OSA.
37. Government House noted the ICO’s preliminary view that section 37(1) of the PATI Act only captures prohibitions set out in an Act of the Bermuda Parliament, in accordance with section 2 of the Interpretation Act. Government House argued, however, that this interpretation overlooks the provision in section 2 of the Colonial Laws Validity Act 1865 (**Colonial Laws Validity Act**).
38. According to this provision in the Colonial Laws Validity Act, any Bermudian law which is repugnant to the provisions of any Act of the UK Parliament extending to Bermuda

---

<sup>5</sup> See Decision 05/2017, Bermuda Monetary Authority; Decision 12/2018, Ministry of Finance Headquarters; Decision 12/2019, Bermuda Monetary Authority; and Decision 27/2019, Bermuda Health Council.



(such as the OSAs) shall be read subject to such Act and shall, to the extent of any repugnancy, be and remain absolutely void and inoperative. When read with section 37(1) of the PATI Act, section 2 of the Interpretation Act needs to be interpreted and applied subject to section 2 of the Colonial Laws Validity Act. To the extent that disclosure is not authorised in accordance with the OSAs, the PATI Act does not override the OSAs.

39. The OSAs do not create a blanket mandatory prohibition on disclosure and only prohibit unauthorised disclosure.
40. Government House will reconsider the authorisation to disclose the responsive records after the Acting Information Commissioner issues her decision. Disclosure will remain prohibited until that authorisation has been given.

#### *Applicant's submissions*

41. The Applicant did not provide submissions on Government House's reliance on the exemption in section 37(1).

#### *Discussion*

42. The Information Commissioner considers Government House's reliance on section 37(1) in withholding all responsive records, save for the six records which fall outside the scope of the PATI Act, as referred to in paragraph 26.

*[1] What is the statutory provision creating the mandatory prohibition on disclosure?*

43. As explained above, 'statutory provisions' in section 37(1) of the PATI Act should be understood as being limited to the provisions in Bermuda legislation. The Acting Information Commissioner disagrees with Government House's submission that section 37(1) includes section 2 of the 1911 OSA and section 3 of the 1989 OSA, which are provisions of Acts of the UK Parliament.
44. Section 2 of the Colonial Laws Validity Act<sup>6</sup> relied upon by Government House does not render section 37(1) of the PATI Act void and inoperative with respect to the OSAs.

---

<sup>6</sup> Section 2 of the Colonial Laws Validity Act reads: "Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of [the UK] Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

This is because section 37(1) is not repugnant to either section 2 of the 1911 OSA or section 3 of the 1989 OSA.

45. For the purpose of the Colonial Laws Validity Act, a colonial law (which includes the law of a British overseas territory) is said to be 'repugnant' if it is inconsistent or contrary to an Act of the UK Parliament.<sup>7</sup> Higgins J in the Union Steamship case stated that a colonial Act is "to be valid except to the extent of any actual repugnancy or direct collision between the two sets of provisions".<sup>8</sup>
46. The Acting Information Commissioner is satisfied that there is no actual repugnancy or direct collision between section 37(1) of the PATI Act and the OSAs provisions cited by Government House. The relevant OSAs provisions were intended to prevent unauthorised disclosures as a result of espionage and spying.<sup>9</sup> A statutory provision in a colonial law would be in direct collision with the OSAs only if it were to allow or decriminalise unauthorised disclosures.
47. Section 37(1) does not require the publication of any information, neither does it allow or decriminalise unauthorised disclosures. Rather, it preserves existing confidentiality and secrecy provisions in effect at the time of the PATI Act's passage. More broadly, and similar to the UK Freedom of Information Act, the PATI Act contains exemptions applicable to records containing national security information and international relations which ensure that information may be kept confidential, where appropriate.

---

<sup>7</sup> See Isaacs J. in Attorney General for Queensland v Attorney-General for the Commonwealth [1915] HCA 39 and in Union Steamship Company of New Zealand Ltd v Commonwealth [1925] HCA 23. In the latter case, Isaacs J cited Hearn's Government of England which speaks of the supremacy of the Imperial Legislature: "It was well settled by common law, and it has been declared by an Act of Parliament passed in the year 1865... Originally the rule ran, much in the same form in which power is usually given to corporations to make by-laws, that a colonial Act must not be repugnant to the law of England. Such a restriction, if it were construed literally, would have proved too severe; and accordingly repugnancy was defined to imply, not diversity, but conflict; that is, if there were an Imperial law and a colonial law on the same subject, but with different enactments, the Imperial law must prevail."

<sup>8</sup> Higgins J explained that his understanding of the repugnancy test is similar to that which is used by the English court when considering the implied repeal doctrine. Higgins J cited, among others, AL Smith LJ in Kurtner v Phillips: "Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied", as well as Lord Herschell in Tabernacle Permanent Building Society v Knight: "the test to be, can you read the provisions of the later Act into the earlier, without any conflict between the two".

<sup>9</sup> UK House of Commons Briefing Paper, Number CBP07422, *The Official Secrets Acts and Official Secrecy*, 2 May 2017.

48. It is further worth noting that the processing of PATI requests is within the official duties of a public authority's employee or officer. Disclosure of records under the PATI Act is therefore authorised and thus is outside the scope of the OSAs.
49. The Acting Information Commissioner concludes that section 2 of the 1911 OSA and section 3 of the 1989 OSA are not 'statutory provisions' for the purpose of section 37(1) of the PATI Act. She need not go on to consider the remaining test for the exemption.

### *Conclusion*

50. Government House was not justified in relying on section 37(1) of the PATI Act to withhold the responsive records.

### **CATEGORY 'A' RECORDS: CORRESPONDENCE BETWEEN GOVERNMENT HOUSE AND THE UK FCO OR THE US AUTHORITIES**

#### *International relations: information communicated in confidence – section 32(1)(b)*

51. Section 32(1)(b) of the PATI Act allows public authorities to refuse a PATI request for records which contain information communicated in confidence by a State or an international organisation of States. This provision relates to the circumstances under which the information was obtained and the conditions placed on it by its supplier. It does not relate primarily to the subject of the information or the harm that may result from its disclosure.
52. In accordance with section 32(2) of the PATI Act, 'State' includes the UK and any of its overseas territories.
53. The Information Commissioner has defined confidential information in this context as when "the terms on which it was obtained require it to be held in confidence" or "while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held."<sup>10</sup> The totality of the circumstances under which the information was communicated should be considered before making a judgment on whether it was communicated in confidence.
54. Factors that may be considered include whether:
  - a. there was a statement by the State or body which supplied the information, indicating that confidentiality is required;

---

<sup>10</sup> Decision 13/2018, Ministry of Finance Headquarters, para. 85.

- b. a record may have been marked as confidential by the State or body supplying it, although this will not be conclusive of the matter;
  - c. similar information was previously provided in confidence and the same terms of its provision can reasonably be presumed to continue to exist; and
  - d. apart from any formal identification, the information is of a sort considered to be confidential by convention.
55. If the information is available in the public domain, it is unlikely to be confidential. If it might be obtained on request under access to information law in another State, it is unlikely to be considered confidential.
56. In sum, for a public authority to deny access to a record, or part of a record, under section 32(1)(b), it must ask:
- [1] Was the information communicated by a State or international organisation of States?
  - [2] Was the information, under the totality of the circumstances, communicated in confidence?
  - [3] If the exemption is engaged, does the balance of the public interest require disclosure?
57. A public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify applying the exemption. If not, a public authority cannot rely on the exemption to deny access to the record.

#### *Public authority's submissions*

58. Government House explained that its correspondence with the UK FCO were sent on an encrypted communications system which is designed to ensure the security of the records. This creates a reasonable expectation that the information in the documents will be held in confidence. Given the records contain information pertaining to national security, international relations, the Governor's responsibilities and his communications with the UK, it is self-evident that they were communicated in confidence.
59. Government House submitted that its correspondence with the US authorities were also communicated in confidence. The content of some of the records is clearly of a sensitive nature and would have been communicated in the expectation that it would

remain confidential. Government House referred to paragraph 86(iv) of the Information Commissioner's Decision 13/2018, Ministry of Finance Headquarters. By convention the information will have been considered to have been conveyed in confidence.

60. It further submitted that security classification of a document, or the lack of a security classification, is not determinative of whether a record was communicated in confidence or whether it is otherwise exempt from disclosure under the PATI Act (paragraph 86(ii) of Decision 13/2018).
61. Government House provided explanations of the previous and current UK Government security classifications.
62. Government House recognised the public interest in transparency and in contributing to a debate on matters of public interest. This, however, needs to be balanced in the context of each qualified exemption followed by a decision on whether the public interest in favour of disclosure outweighs the public interest against disclosure.

#### *Applicant's submissions*

63. The Applicant argued that disclosure of the records was in the public interest as it would create greater transparency around a matter which the public only learned about when the Uighur men arrived in Bermuda.
64. The Applicant submitted that the UK Government knew nothing about the deal between the US and Bermuda Governments on the transfer of the Uighur men to Bermuda. It is in the interest of all British citizens to understand how the UK initially had responded on the arrival of the men and how its position had changed over time. The records should not be withheld on the basis that their disclosure might embarrass the UK Government.
65. There was significant public concern about how the deal was struck, including whether the Bermuda Government had acted outside of its authority as a British Overseas Territory, or whether it had accepted a *quid pro quo* from the US authorities. There was local concern about the decisions taken by the Premier and a Cabinet minister, evidenced by a public protest, as well as international concern about how the US authorities had persuaded other countries to deal with the prisoners it had held at Guantanamo Bay without charge.

66. The Applicant also submitted that, given the lapse of time, there was no need to keep the deal between the Bermuda Government and the US authorities, which happened a decade ago, in secrecy.

### *Discussion*

*[1] Was the information communicated by a State or international organisation of States?*

67. The records being considered are correspondence between Government House and the UK FCO or the US authorities. The Acting Information Commissioner is satisfied that they contain information communicated by a State.

*[2] Was the information communicated in confidence?*

68. Government House has not provided any evidence of a formal agreement with the UK or the US to support its assertion that the records were communicated in confidence. Neither did it provide any statements by the US authorities indicating that confidentiality is required. Some of the correspondence did not have any security mark assigned to them, but were stored in files marked as 'Restricted' or 'Official Sensitive'. This might show Government House's understanding that the records had been communicated in confidence as they relate to a matter that had been treated as confidential throughout.
69. In any event, as the Information Commissioner stated in Decision 13/2018, the marking of a document as confidential by a State is not conclusive of whether it was communicated in confidence. The totality of the circumstances under which the record was communicated, as well as the content and nature of the records, should be taken into account.
70. In this case, the Acting Information Commissioner is satisfied that the circumstances under which the responsive records were communicated created a reasonable expectation on the part of the UK FCO that they would be held in confidence. The correspondence between Government House and the UK FCO on matters relating to the Uighurs were communicated on an encrypted communications system designed to ensure the security of the records. The content of this correspondence relates to issues of national security and international relations.
71. The Acting Information Commissioner is further satisfied that the communication between Government House and the US authorities was done in confidence. The correspondence involves matters such as sensitive personal information, national

security, and international relations. The Acting Information Commissioner is satisfied that there was an implied confidentiality requirement which applied to the correspondence between Government House and the US authorities.

72. The Acting Information Commissioner is satisfied that section 32(1)(b) is applicable to the records of correspondence between Government House and the UK FCO or the US authorities responsive to the PATI request.

*[3] Does the balance of the public interest require disclosure?*

73. The Acting Information Commissioner acknowledges the controversy surrounding the relocation of the Uighurs to Bermuda and notes that there has not been much information made publicly available on this issue. The terms and conditions of the Uighurs' relocation to Bermuda remain unknown to the public. As such, disclosure would, to some extent, promote greater public understanding of the decision to relocate the Uighurs to Bermuda.
74. Disclosure of the confidential correspondence between Government House and the UK FCO or the US authorities, however, could reasonably be expected to undermine Bermuda's relations with these countries. It may undermine the trust and confidence which had been built between these States. There is a strong public interest in Bermuda being able to enjoy effective international relations with its partners, including being able to continue to receive confidential information from other States.

### *Conclusion*

75. Government House was justified in relying on section 32(1)(b) of the PATI Act to refuse access to Category A records, i.e., its records of correspondence with the UK FCO or the US authorities responsive to the PATI request. Their disclosure is not required by the public interest.
76. Government House invoked the exemptions in section 33(1)(b) (Governor's correspondence with the UK) and section 35(1) (legal professional privilege) to justify withholding some of the Category A records. In light of the Acting Information Commissioner's conclusion that Government House was justified in refusing access to Category A records in their entirety under section 32(1)(b) of the PATI Act, she has not gone on to consider Government House's reliance on these two other exemptions.

**CATEGORY 'B' RECORDS: CORRESPONDENCE BETWEEN GOVERNMENT HOUSE AND THE BERMUDA GOVERNMENT**

77. Category B records consist of records 3, 7, 10-15, 17-20, 35, 37-39 and parts of record 8b, which are correspondence between Government House and the Bermuda Government responsive to the PATI request.
78. Record 3 is a letter from the Bermuda Government to Government House, attaching another letter whose content is already available in the public domain. Because the content of the attachment is publicly available, Government House has agreed not to continue withholding it. The Acting Information Commissioner therefore will not consider the applicability of the remainder of the exemptions invoked by Government House to the attachment to record 3.

***Personal information – section 23(1)***

79. Records consisting of personal information are exempt under section 23(1) of the PATI Act, subject to a limited number of exceptions set out in section 23(2).
80. Personal information is defined broadly in section 24(1) as “information recorded in any form about an identifiable individual”, such as information relating to the race, national or ethnic origin, or religion of an individual.
81. Section 24(2) excludes specific categories of information from the broad definition of ‘personal information’, such as “information about an individual . . . who is or was an officer or employee of a public authority that relates to the position or functions of the individual” (subsection 2(a)).
82. If the personal information exemption is engaged, the public authority must consider whether the public interest test in section 21 requires disclosure, in accordance with section 23(6). Section 23(6) also requires disclosure under other circumstances not relevant in this case.
83. In the context of personal information, the public interest test requires a balancing of public interests in favour of knowing an individual’s personal information, on the one hand, against the privacy rights of the individual and any other public interest in favour of confidentiality, on the other. As such, when applying the public interest test, the Acting Information Commissioner will consider whether disclosure:
  - a. will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations;



- b. would be fair to the individual under all of the circumstances. This may include consideration of whether there was any sensitive personal information<sup>11</sup> involved. If a record contains sensitive personal information, the fairness concerns surrounding disclosure may be heightened.<sup>12</sup> Other factors which may also be relevant include the possible consequences of disclosure upon the individual, and the reasonable expectations of privacy of a person in the individual's position; and
- c. is necessary to further the public interests that have been identified.

84. In sum, to appropriately invoke the personal information exemption, a public authority must ask:

[1] Whether the records consist of information about an identifiable individual?

[2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?

[3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

[4] If the exemption for personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure, or whether disclosure would benefit the individual?

85. The personal information exemption is the only exemption the Acting Information Commissioner will consider on her own initiative.

#### *Public authority's submissions*

86. Government House submitted that the personal information exemption is applicable and that the disclosure of such information is not in the public interest.

#### *Applicant's submissions*

87. The Applicant did not make specific submissions on the applicability of the exemption, but highlighted the public interest factors in favour of disclosure as summarised in above paragraphs 63-66.

---

<sup>11</sup> Section 7(1) of the Personal Information Protection Act 2016 defines 'sensitive personal information' as "any personal information relating to an individual's place of origin, race, colour, national or ethnic origin, sex, sexual orientation, sexual life, marital status, physical or mental disability, physical or mental health, family status, religious beliefs, political opinions, trade union membership, biometric information or genetic information".

<sup>12</sup> Decision 02/2019, Office of the Governor, para. 52.

### *Third parties' submissions*

88. The Third Parties object to disclosure of any information in relation to them.
89. The Third Parties emphasised their background and personal circumstances and asked the Acting Information Commissioner to take them into account. The Third Parties further submitted that disclosure would put them back in the spotlight and endanger their physical or mental health or safety.

### *Discussion*

90. The Acting Information Commissioner considers the application of the personal information exemption to records, or parts of records, 3, 7, 8b, 10-15, 17-20, 35, and 37-39. Many of these records are correspondence between Government House and another public authority in Bermuda on the Third Parties.

*[1] Do the records contain information about an identifiable individual?*

91. The Acting Information Commissioner is satisfied that records, or parts of records, 7, 8b, 10-15, 17-20, 35, and 37-39 contained information about the Third Parties. These records also contained information about a number of officers and employees of public authorities, the Governor, the Deputy Governor, and elected officials.
92. Parts of record 3 contain information about officers and employees of public authorities, but otherwise the remainder of this record does not contain information about any identifiable individual and thus does not fall under the personal information exemption.

*[2] Does the information fall within any of the exclusions to the definition of personal information (section 24(2))?*

93. None of the exclusions in section 24(2) apply to the records or parts of records containing information about the identified individuals. Specifically, information concerning the officers and employees of public authorities in the relevant records does not relate to their 'position' or 'functions'. As the Information Commissioner explained in Decision 02/2019, Office of the Governor, routine personal work information of public sector employees and elected officials, such as a work email address and authorship of a work document, does not fall within the scope of the exclusion in section 24(2)(a) and thus still falls within the definition of personal information.

*[3] Do any of the exceptions to the exemption in section 23(2) apply to the records?*

94. None of the exceptions in section 23(2) are relevant in this case. Specifically, the ICO did not receive any written consent to disclosure from the Third Parties or other individuals whose personal information is included in the relevant records.

*[4] Does the balance of the public interest require disclosure?*

95. There is a general public interest in promoting greater public understanding about the processes or decisions of public authorities, as set out in regulation 2 of the PATI Regulations.
96. In the present case, information about the public authorities' decision-making process is closely intertwined with the personal information of the Third Parties, relevant elected officials, and public officers or employees. As such, in considering disclosure of the relevant records, or parts of records, the Acting Information Commissioner has to carefully strike the balance between satisfying the identified public interest and the protection of privacy of these individuals.
97. Most of the information in records 7, 8b, 10-15, 17-20, 35, and 37-39 relates to the Third Parties' private lives, with some of it amounting to sensitive personal information. Due to the extraordinary circumstances surrounding their transfer to Bermuda, the Third Parties and some aspects of their private lives have been exposed to the public. But this does not mean that they no longer have a reasonable expectation that their personal information would not be disclosed to the public without their consent.
98. The Acting Information Commissioner considers the personal background and circumstances of the Third Parties and is satisfied that disclosure of their personal information could reasonably be expected to be detrimental to them.
99. There are, however, parts in records 13, 35, and 39 which, although relating to the Third Parties, should be disclosed to the public. These particular parts of the records purely speak to the process of the handling of the immigration-related applications of the Third Parties. Their disclosure will satisfy the public interest in helping the public to better understand the authorities' decision-making process, while still respecting the privacy of the Uighurs and their families.
100. The Acting Information Commissioner is of the view that it would be fair to disclose the routine personal work information of the officers or employees of public

authorities, the Governor, the Deputy Governor, and the elected officials in records 3, 7, 12-15, 17-20, 35, and 39. The information in the responsive records relates to their public, not private, lives. Given their public positions, these individuals should expect that much of their routine personal work information could potentially be disclosed to the public. The Acting Information Commissioner is further satisfied that disclosure could not reasonably be expected to prejudice them.

101. Lastly, it is noted that, during this review, a redacted copy of records or parts of records 8b, 10, and 11 were disclosed by another public authority in response to a separate PATI request. Parts of record 12 are also in the public domain. Because they have been officially made available in the public domain, the public interest factors in support of withholding these records in their entirety are significantly weakened. These records should be disclosed in redacted form in accordance with the Confidential Annex attached to this Decision.

### *Conclusion*

102. Government House was justified in relying on section 23(1) of the PATI Act to refuse access to personal information of the Third Parties in records 37 and 38 in their entirety and parts of records 7, 12-15, 17-20, 35, and 39. Disclosure of these records, or parts of records, would be unfair and unnecessary, and as such is not in the public interest.

103. Government House was not justified in relying on section 23(1) of the PATI Act to refuse access to the following:

- record 3 in its entirety;
- parts of records 13, 35, and 39 on public authorities' decision-making process;
- parts of records 7, 12-15, 17-20, 35, and 39 on routine personal work information of the officers or employees of public authorities; and
- parts of records 8b and 10-12 which have been officially made available in the public domain,

as identified in the Confidential Annex.

### *Deliberations of public authorities – section 29(1)*

104. Under section 29(1), a record is exempt from disclosure if it consists of information which, if disclosed, could reasonably be expected to undermine the deliberative

process of a public authority, including free and frank discussion and the provision of advice in the course of that process.

105. The exemption in section 29(1) does not apply to certain categories of information listed in section 29(2) of the PATI Act. The exception that is potentially applicable in this case is that in section 29(2)(a), namely, factual or statistical information contained in a record.

106. In Decision 02/2019, Office of the Governor, the Information Commissioner defines 'deliberative process' as the consideration or evaluation of competing arguments, information, and facts with a view to making a decision.

107. For section 29(1) to apply, a public authority must show that disclosure would undermine or could reasonably be expected to undermine the deliberative process. 'Undermine' should be read to have the same meaning as 'prejudice' in other provisions in the PATI Act, i.e., a harm that is actual, real and significant. It implies that the disclosure would have a negative effect in some way.

108. To appropriately rely on section 29(1), a public authority must consider the following questions<sup>13</sup> (Decision 02/2019, Office of the Governor):

[1] Does any of the information fall within any of the exceptions listed in section 29(2)?

[2] Could disclosure of the record reasonably be expected to undermine a public authority's deliberative process?

[3] Does the public interest test require disclosure?

#### *Public authority's submissions*

109. Government House identified various deliberative processes within its records being withheld under section 29(1).

110. Some of these deliberative processes involve discussion of sensitive information and matters.

111. Government House accepts that there is a public interest in the transparency of processes and procedures relating to the BOTC naturalisation applications. It recognises that there is public interest in making sure that a fair and consistent approach is applied in all naturalisation applications. The relevant naturalisation

---

<sup>13</sup> Decision 02/2019, Office of the Governor, paras. 176-187.

applications, however, involve individuals whose circumstances are unique and complex and relate to wider international and national security affairs.

112. Public disclosure of sensitive matters that relate to national security would breach the confidence of other States. This will make it difficult for Government House to restore Bermuda's relations with those States, particularly if and when Bermuda depends on assistance from them in other similar matters.

#### *Applicant's submissions*

113. The Applicant did not make specific submissions on the applicability of the exemption, but highlighted the public interest factors in favour of disclosure, summarised in paragraphs 63-66.

#### *Discussion*

114. The Acting Information Commissioner does not consider Government House's reliance on section 29(1) to withhold records or parts of the records identified in paragraph 102, which are exempt under the personal information exemption and whose disclosure is not in the public interest. Instead, the Acting Information Commissioner must now consider whether Government House has justified its reliance on section 29(1) to withhold record 3 and parts of records 7, 8b, 10-15, 17-20, 35, and 39 as identified in paragraph 103.

[1] *Does any of the information fall within any of the exceptions listed in section 29(2)?*

115. The names and contact details of officers or employees of public authorities, the Governor, the Deputy Governor, and elected officials in records 3, 7, 8b, 10-15, 17-20, 35, and 39 are factual information under section 29(2)(a). They do not fall within the scope of the exemption in section 29(1).

[2] *Could disclosure of the record reasonably be expected to undermine a public authority's deliberative process?*

116. Record 3 and parts of records 13, 35, and 39 that relate to public authorities' decision-making process do not contain sensitive information. As they were part of the relevant individuals' day-to-day functions, it is unlikely that disclosure could prejudice a public authority's deliberative process.
117. The Acting Information Commissioner is further satisfied that disclosure of parts of records 8b and 10-12 could not reasonably be expected to undermine a public

authority's deliberative process because they have been officially made available in the public domain.

### *Conclusion*

118. Government House was not justified in relying on section 29(1) of the PATI Act to refuse access to:

- record 3 in its entirety;
- parts of records 13, 35, and 39 on public authorities' decision-making process;
- parts of records 7, 12-15, 17-20, 35, and 39 on routine personal work information of the officers or employees of public authorities; and
- parts of records 8b and 10-12 which have been officially made available in the public domain.

Because these records, or parts of records, are not exempt under section 29(1) of the PATI Act, the Acting Information Commissioner need not consider the public interest test.

### *Prejudice to national security, defence and international relations – section 32(1)(a)*

119. A record is exempt under section 32(1)(a) of the PATI Act if its disclosure would prejudice, or could reasonably be expected to prejudice, Bermuda's security or defence or its relations with any State or international organisation of States.

120. 'Prejudice' means a harm that is actual, real and significant.

121. 'State', pursuant to section 32(2), includes the UK and any Overseas Territory of the UK.

122. For the exemption in section 32(1)(a) to apply, public authorities must be able to:

- [1] Identify the prejudice, either to the security and/or defence of Bermuda and/or relations between Bermuda and any State or international organisation of States;
- [2] Explain the likelihood of the prejudice occurring; and
- [3] Demonstrate that disclosure is not required by the public interest.

### *Public authority's submissions*

123. Government House argued that disclosure would prejudice the conduct of effective international relations and the maintenance of Bermuda's national security, in that it would impede the ability of the Governor to obtain free and frank advice and to engage in candid discussion with the UK Government and other States.
124. Government House accepts that disclosure may not lead to a direct or immediate threat to national security, but emphasised that national security depends on cooperation with others and effective international relations which, if damaged, can have adverse consequences.
125. The consequences of damaging relations with other States would be sufficiently great that the relevant records should not be disclosed.

### *Applicant's submissions*

126. The Applicant did not make specific submissions on the applicability of the exemption, but highlighted the public interest factors in favour of disclosure as summarised in paragraphs 63-66.

### *Discussion*

127. The Acting Information Commissioner now considers Government House's reliance on section 32(1)(a) to records or parts of records identified in paragraph 118.

*[1] What is the relevant prejudice to Bermuda's national security and international relations?*

128. The Acting Information Commissioner agrees with Government House that any impediment to the Governor's ability to obtain free and frank advice and to engage in candid discussion with other States might amount to prejudice to Bermuda's national security and international relations.

*[2] What is the likelihood of the prejudice occurring?*

129. It is unlikely, however, that disclosure of records or parts of records identified in paragraph 118 would lead to the prejudice identified because they consist of only non-sensitive information.



## *Conclusion*

130. Government House was not justified in relying on section 32(1)(a) of the PATI Act to refuse access to records or parts of records identified in paragraph 118. Because they are not exempt under section 32(1)(a) of the PATI Act, the Acting Information Commissioner need not consider the public interest test.

## *Governor's responsibilities – section 33(1)(a)*

131. A public authority may refuse to disclose records responsive to a PATI request under section 33(1)(a) if the records contain information relating to the Governor's responsibilities under section 62 of the Bermuda Constitution Order 1968 (**Bermuda Constitution**) which, if disclosed, could reasonably be expected to prejudice the effective conduct of public affairs.
132. The Governor's responsibilities under section 62(1) of the Bermuda Constitution are matters relating to external affairs, defence (including armed forces), internal security, and the police.
133. As explained in paragraphs 107 and 120, 'prejudice' in its plain meaning means a harm that is actual, real and significant. 'Prejudice to the effective conduct of public affairs' thus should be understood as a negative or detrimental effect on a public authority's free and frank advice, its exchange of views, and its ability to provide services to the public or to meet its objectives and purposes.
134. The likelihood of the prejudice to occur has to be reasonable. This means that disclosure must create an objectively reasonable expectation that the effective conduct of public affairs will be prejudiced. The expectation must be plausible or possible based on real and substantial factual grounds. Mere speculation is not sufficient to sustain the exemption.
135. The exemption in section 33(1)(a) is subject to the public interest. As such, if the exemption in section 33(1)(a) is engaged, the public interest test must be considered.
136. Public authorities must consider the following questions in determining whether the section 33(1)(a) exemption is applicable:

[1] Do the records relate to the Governor's special responsibilities under section 62 of the Bermuda Constitution?

[2] What is the prejudice to the effective conduct of public affairs that disclosure could reasonably be expected to cause?

[3] What is the likelihood of the prejudice to occur?

[4] Is the disclosure in the public interest?

*Public authority's submissions*

137. The Governor's responsibilities under section 62 of the Bermuda Constitution include responsibility for the conduct of any business of the Bermuda Government with respect to external affairs, defence, and internal security.
138. Given the Governor's responsibility for security and external affairs, it is critical that external bodies and foreign powers can communicate with him knowing that their deliberations will be held in confidence. Any breach of this would lead to a breakdown in trust and a reluctance to engage in future discussions which could significantly impair his capacity to fulfil his obligations.
139. The consequences of this harm occurring are sufficiently significant that the relevant records should not be disclosed.

*Applicant's submissions*

140. The Applicant did not make specific submissions on the applicability of the exemption, but highlighted the public interest factors in favour of disclosure as summarised in paragraphs 63-66.

*Discussion*

141. The Acting Information Commissioner now considers Government House's reliance on section 33(1)(a) to withhold records or parts of records identified in paragraph 118.

*[1] Do the records relate to the Governor's special responsibilities under section 62 of the Bermuda Constitution?*

142. The Acting Information Commissioner accepts Government House's submissions that its correspondence with the Bermuda Government responsive to the PATI request relates to the Governor's special responsibilities for external affairs and/or internal security.

*[2] What is the prejudice to the effective conduct of public affairs that disclosure could reasonably be expected to cause?*

143. The Acting Information Commissioner further accepts that significant impairment to the Governor's capacity to fulfil his obligations, caused by the loss of trust from

external bodies and foreign powers, would amount to prejudice to the effective conduct of public affairs.

[3] *What is the likelihood of the prejudice to occur?*

144. It is unlikely, however, that disclosure of records or parts of records identified in paragraph 118 could be expected to lead to this significant impairment of the Governor's capacity to fulfil his obligations, because they consist of only non-sensitive information.

### *Conclusion*

145. Government House was not justified in relying on section 33(1)(a) of the PATI Act to refuse access to records or parts of records identified in paragraph 118. Because they are not exempt under section 33(1)(a) of the PATI Act, the Acting Information Commissioner need not consider the public interest test.

### *Conclusion*

146. The Acting Information Commissioner finds that the PATI Act does not apply to six of the responsive records, in accordance with section 4(1)(b).
147. Government House has justified its reliance on the exemption for information communicated in confidence by States in section 32(1)(b) to withhold its records of correspondence with the UK FCO and the US authorities responsive to the PATI request, in their entirety.
148. Subject to the conclusion in the next paragraph, Government House has also justified its reliance on the exemption for personal information in section 23(1) to withhold personal information of the Third Parties in records 37 and 38 as well as parts of records 7, 8b, 10-15, 17-20, 35, and 39.
149. The Acting Information Commissioner finds that Government House has not justified its reliance on the exemptions in sections 23(1), 29(1), 32(1)(a), 33(1)(a), and 37(1) to withhold record 3, parts of records 13, 35, and 39 which relate to public authorities' decision-making process, parts of records 7, 12-15, 17-20, 35, and 39 on routine personal work information of the officers or employees of public authorities, and parts of records 8b, 10, 11, and 12 which are available in the public domain. These records, or parts of records, either are not exempt or their disclosure is required by the public interest.

150. Finally, the Acting Information Commissioner need not consider Government House's reliance on the exemptions for the Governor's communications with the UK FCO in section 33(1)(b) and for legal professional privilege in section 35(1). This is because the records which Government House withholds under these exemptions have been found to be exempt under the exemption for information communicated in confidence by States in section 32(1)(b).

## Decision

---

The Acting Information Commissioner finds that the Office of the Governor (**Government House**) has justified its reliance on sections 23(1) and 32(1)(b) to deny access to some of its correspondence, or parts of correspondence, with the UK FCO, the US authorities, and the Bermuda Government responsive to the PATI request. Government House failed to justify its reliance on sections 23(1), 29(1), 32(1)(a), 33(1)(a), and 37(1) in withholding the remainder of records or parts of records. Government House also applied provisions of the PATI Act to records to which the Act does not apply.

In accordance with section 48(1)(a) of the PATI Act, the Acting Information Commissioner:

- annuls Government House's decision with respect to six of the responsive records on the basis that the PATI Act does not apply to these records, in accordance with section 4(1)(b) of the PATI Act;
- affirms Government House's decision to deny access to records of its correspondence with the UK FCO and the US authorities in full on the basis that they are exempt in accordance with section 32(1)(b) of the PATI Act and to records 37 and 38 and parts of records 7, 8b, 10-15, 17-20, 35, and 39 on the basis that they are exempt in accordance with section 23(1) of the PATI Act;
- reverses the decision to deny access to record 3 and parts of records 7, 8b, 10-15, 17-20, 35, and 39 and orders Government House to disclose these records as instructed in the Confidential Annex, which forms part of this Decision.

The Acting Information Commissioner requires that Government House grant access to the records listed above, as directed by this Decision and the accompanying Order on or before **Monday, 14 September 2020**.

## Judicial Review

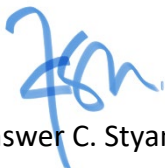
---

The Applicant, Government House, the Third Parties, or any party aggrieved by this Decision has 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.

## Enforcement

---

This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If Government House fails to comply with this Decision, the Acting Information Commissioner has the authority to pursue enforcement in the same manner as an Order of the Supreme Court.



Answer C. Styannes  
Acting Information Commissioner  
27 July 2020

## Appendix 1: Summary of exemptions and disclosure decision

Record	Exemption applied	Disclosure decision
<b>Category B: Government House &amp; the Bermuda Government correspondence</b>		
<b>3</b>	None	Disclose in full
<b>7</b>	Personal information – s.23(1)	Disclose in part
<b>8b</b>	Personal information – s.23(1)	Disclose in part
<b>10</b>	Personal information – s.23(1)	Disclose in part
<b>11</b>	Personal information – s.23(1)	Disclose in part
<b>12</b>	Personal information – s.23(1)	Disclose in part
<b>13</b>	Personal information – s.23(1)	Disclose in part
<b>14</b>	Personal information – s.23(1)	Disclose in part
<b>15</b>	Personal information – s.23(1)	Disclose in part
<b>17</b>	Personal information – s.23(1)	Disclose in part
<b>18</b>	Personal information – s.23(1)	Disclose in part
<b>19</b>	Personal information – s.23(1)	Disclose in part
<b>20</b>	Personal information – s.23(1)	Disclose in part
<b>35</b>	Personal information – s.23(1)	Disclose in part
<b>37</b>	Personal information – s.23(1)	Access denied in full
<b>38</b>	Personal information – s.23(1)	Access denied in full
<b>39</b>	Personal information – s.23(1)	Disclose in part
<b>Category A: Government House &amp; the UK FCO correspondence</b>	International relations: information communicated in confidence – s.32(1)(b)	Access denied in full
<b>Category A: Government House &amp; the US authorities correspondence</b>	International relations: information communicated in confidence – s.32(1)(b)	Access denied in full

## Appendix 2: Relevant statutory provisions

---

### Public Access to Information Act 2010

#### Application

- 4 (1) Subject to subsection (2), this Act does not apply to—
- (a) records relating to the exercise of judicial or quasi-judicial functions by any court, tribunal or other body or person; or
  - (b) records obtained or created by any of the following public authorities in the course of carrying out their functions—
    - (i) the Office of the Auditor General;
    - (ii) the Human Rights Commission;
    - (iii) the Office of the Information Commissioner;
    - (iv) the Office of the Ombudsman;
    - (v) the Department of Public Prosecutions . . . ;
    - (vi) the Attorney General’s Chambers;
    - (vii) the Department of Internal Audit.
- (2) The reference to records in subsection (1) does not include records relating to the general administration of—
- (a) any court, tribunal or other body or person referred to in subsection (1)(a); or
  - (b) any public authority referred to in subsection (1)(b). . . .

#### Public interest test

- 21 For the purposes of this Part, the test of whether disclosure by a public authority of a record or the existence of a record is in the public interest is whether the public interest would, on balance, be better served by disclosure than by non-disclosure.

#### Health or safety of individual

- 22 (1) Subject to subsection (2), a record is exempt from disclosure if its disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.
- (2) A record shall be disclosed if disclosure of it is in the public interest.

#### Personal information

- 23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.
- ...

(6) A record that contains personal information relating to an individual shall be disclosed if disclosure of it is in the public interest or would benefit the individual.

### **Definition of personal information**

24 (1) Subject to subsection (2), “personal information” means information recorded in any form about an identifiable individual, including—

...

(2) But “personal information” does not include—

(a) Information about an individual . . . ; who is or was an officer or employee of a public authority that relates to the position or functions of the individual. .

..

### **Deliberations of public authorities**

29 (1) Subject to subsections (2) and (3), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine, or could reasonably be expected to undermine, the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.

(2) Subsection (1) does not apply to information contained in a record that is—

(a) factual or statistical information;

(b) information resulting from an investigation or analysis of the performance, efficiency or effectiveness of a public authority in relation to its functions;

(c) information in the nature of a report, study or analysis of a scientific or technical expert; or

(d) information in the nature of the reasons of a public authority for making a particular decision.

(3) A record shall be disclosed if disclosure of it is in the public interest.

### **National security, defence, and international relations**

32 (1) Subject to subsection (3), a record is exempt from disclosure if—

(a) disclosure of it would prejudice, or could reasonably be expected to prejudice, the security or defence of Bermuda or relations between Bermuda and any State or international organization of States; or

(b) the record contains information communicated in confidence by a State or an international organization of States.

(2) For the purposes of this section “State” includes the United Kingdom and any overseas territory of the United Kingdom.

(3) A record shall be disclosed if disclosure of it is in the public interest.



### **Governor's responsibilities and communications with the United Kingdom**

33 (1) Subject to subsection (2), a record is exempt from disclosure if—

- (a) it contains information that relates to the responsibilities of the Governor under section 62 of the Bermuda Constitution Order 1968, the disclosure of which would prejudice, or could reasonably be expected to prejudice, the effective conduct of public affairs; or
- (b) it consists of communications between the Office of the Governor and departments of the Government of the United Kingdom relating to business of the Office of the Governor, the disclosure of which would prejudice, or could reasonably be expected to prejudice, the effective conduct of public affairs.

(2) A record shall be disclosed if disclosure of it is in the public interest.

### **Legal professional privilege**

35 (1) Subject to subsection (2), a record is exempt if it is of such a nature that it would be exempt from production in legal proceedings on the ground of legal professional privilege.

(2) Subject to subsection (3), a record shall be disclosed if disclosure of it is in the public interest.

(3) For the avoidance of doubt a record held by the Attorney General or the Director of Public Prosecutions, that is the subject of legal professional privilege, shall be an exempt record and shall not be subject to public disclosure of any kind.

### **Disclosure prohibited by other legislation**

37 (1) Subject to subsection (6), a record is exempt if its disclosure is prohibited by any statutory provision, other than this Act.

...

**Information Commissioner for Bermuda  
Maxwell Roberts Building  
4<sup>th</sup> Floor  
One Church Street  
Hamilton, HM 11  
[www.ico.bm](http://www.ico.bm)  
441-543-3700**