

## Decision Notice

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### Decision 09/2022: Department of Public Prosecutions

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#### **Sexual offence statistical information**

**Reference no:** 20211214-01

**Decision date:** 31 March 2022

## Summary

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On 24 June 2021, the Applicant asked the Department of Public Prosecutions (**DPP**) for records containing various statistical information on sexual offence cases. This Decision finds that there are no issues for the Information Commissioner to review. The Information Commissioner affirms the DPP's internal review decision and does not require the DPP to take any further action in response to this request.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 47 (review).

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

## Background

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1. On 24 June 2021, the Applicant made a Public Access to Information (**PATI**) request to the DPP for records containing the following statistical information, from 1 July 2016 to 24 June 2021:
  - a. The number of files concerning sexual offences passed to the DPP by the Bermuda Police Service (**BPS**) per year (**item 1**);
  - b. The number of sexual offence cases, per year, which the DPP decided to proceed with charges (**item 2**);
  - c. For each sexual offence case, the time it took for the DPP to make a decision on charges, after receiving the file from the BPS (**item 3**); and
  - d. For each sexual offence case, the time it took from charges being laid to the defendant being convicted, acquitted or the matter being otherwise concluded. Where there was no conviction or acquittal, the Applicant also sought the outcome of the case (**item 4**).
2. On 1 July 2021, the Applicant clarified for the DPP that "sexual offences" in the PATI request refer to offences such as intrusion on the privacy of others and indecent assault. The Applicant also clarified on 8 July 2021 that item 3 of the request asks for records on the time period between the DPP receiving the case file from the BPS and advising whether to charge or not.

3. The Applicant did not receive an initial decision and asked for an internal review on 1 September 2021 by the DPP's head of public authority.
4. On 30 October 2021, the DPP disclosed one responsive record and issued an internal review decision<sup>1</sup> as follows:
  - a. Item 1: the DPP advised that files that are passed for advice during an ongoing BPS investigation are not logged into its system as "files passed for a decision on charge". The DPP was therefore unable to provide the responsive statistical information, but advised the Applicant to contact the BPS, who might be able to assist.
  - b. Items 2 and 3: the DPP provided the statistical information from 2017 onwards and explained that it does not have statistics readily available prior to that time.
  - c. Item 4: the DPP provided information from 2017 onwards on the date of first appearance (when charges were laid) and the date the matter concluded per case. The DPP did not calculate the period between the two dates. The DPP also provided the outcomes of each case, when applicable.

The DPP explained that providing the 2016 statistics would be too onerous. The DPP also explained that the statistics it provided are in relation to all offences defined as "Sexual Offence" under section 329D of the Criminal Code Act 1907.

5. The Applicant made a timely application for an independent review by the Information Commissioner. In their correspondence to the Information Commissioner's Office (ICO), the Applicant explained that they would like the Information Commissioner to review the DPP's response to item 1 of the PATI request only. The Applicant further clarified that they are not looking for information on the number of files shared by the BPS to the DPP for advice but, rather, on files that were passed on for a decision on charges.

## Investigation

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6. The application to the Information Commissioner was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request for an

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<sup>1</sup> The DPP issued the internal review decision during the Information Commissioner's review no. 20211019-02 for the Applicant's 'failure to decide' application, which was decided in Decision 13/2021, Department of Public Prosecutions.

internal review to a public authority. As explained below, however, the Information Commissioner is of the view that there are no issues for her consider in this review.

7. The Information Commissioner decided that early resolution under section 46 of the PATI Act 2010 was not appropriate because there are no issues to be resolved.
8. On 15 February 2022, the ICO notified the DPP of the valid application. The ICO also provided the DPP and the Applicant with a reasonable opportunity to make representations, in accordance with section 47(4) of the PATI Act. Specifically, the DPP and Applicant were invited to comment on the ICO Investigation Officer's preliminary view that there are no issues for the Information Commissioner's consideration in this review.
9. The DPP made submissions. The Applicant did not respond to the opportunity to make submissions, but the Information Commissioner considered the Applicant's prior correspondence with the ICO<sup>2</sup>.

### **Information Commissioner's analysis and findings**

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10. 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 as well as the information provided by the DPP in its internal review decision and correspondence with the ICO. She is satisfied that no matter of relevance has been overlooked.
11. The Applicant informed the ICO that they are challenging the DPP's response to item 1 of the PATI request only. The Applicant explained that item 1 looks for statistical information on "how often does the DPP proceed or decide not to proceed with cases passed to it by the BPS on sexual offences." They clarified that they are not looking for statistical information on files shared for advice between the two public authorities.
12. The Information Commissioner is satisfied that what item 1 of the PATI request is seeking was already provided by the DPP in the record that was disclosed at the internal review stage, although it may not have been presented in the format expected by the Applicant. The internal review decision also did not explain how the disclosed record included sufficient information for the Applicant to calculate an answer for item 1, based on the information made available by the DPP.

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<sup>2</sup> The Applicant informed the ICO that they had asked the DPP to confirm the Investigation Officer's preliminary view, prior to the ICO notifying the DPP of this review.

13. The disclosed record included the following information that is relevant to item 1:
  - a. The count of how many cases for each type of sexual offence per year where the DPP approved the case, from 2017 to October 2021; and
  - b. The count of how many cases for each type of sexual offence per year where the DPP refused the case, from 2018 to October 2021 – noting such information was not captured in 2017.
14. To figure out how many files were passed on by the BPS to the DPP per year, the “approved” and “refused” counts may be added together, except for 2017. The details are as follows:

<b>Year</b>	<b>Approved</b>	<b>Refused</b>	<b>Total cases per year</b>
<b>2017</b>	21	No data	Unknown
<b>2018</b>	33	8	41
<b>2019</b>	17	5	22
<b>2020</b>	15	3	18
<b>2021</b>	27	1	28

15. Based on the disclosed record, it can be concluded that 109 sexual offence cases were passed on to the DPP by the BPS between 2018 and October 2021; and, if including the available 2017 information, there were at least 130 cases.
16. The DPP confirmed the ICO’s understanding of the disclosed record. The ICO provided the Applicant with the opportunity to raise any disagreement in the event that something was overlooked, but the Applicant did not make submissions.
17. The internal review decision for item 1 correctly stated that the DPP was unable to provide the information in the format being sought, i.e., statistics. The Information Commissioner has concluded, though, that the internal review decision provided the Applicant with the building blocks to determine the statistical information needed, once the DPP’s explanation for item 1 and the disclosed record itself are considered together. As such, the Information Commissioner is satisfied that there are no issues for the Information Commissioner to consider in this review. Because the Applicant exercised their right to a decision by the Information Commissioner, however, the Information Commissioner is required to issue a decision and notify the relevant parties of such decision along with the reasons, in accordance with section 47(6) of the PATI Act.

## ***Conclusion***

18. There are no issues for the Information Commissioner to consider in this review. The Information Commissioner affirms the DPP's internal review decision of 30 October 2021 on item 1 of the PATI request and does not require the DPP to take further action in response to this request.

## **Decision**

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The Information Commissioner is satisfied that there are no issues for the Information Commissioner to consider in this review. In accordance with section 48 of the Public Access to Information (**PATI**) Act 2010, the Information Commissioner affirms the Department of Public Prosecutions' internal review decision on item 1 of the Applicant's PATI request.

## **Judicial Review**

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The Applicant, the Department of Public Prosecutions, or any person aggrieved by this Decision has the right to seek and apply for judicial review to the Supreme Court in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.



Gitanjali S. Gutierrez  
Information Commissioner  
31 March 2022

### Public Access to Information Act 2010

#### Review

- 47 (1) If the Commissioner decides not to attempt to resolve the matter under section 46 or if any such attempt is not successful, the Commissioner shall commence a review of the matter.
- (2) Subject to this Act, the Commissioner may determine the procedure to be followed in the conduct of a review under this Part.
- (3) Every review shall be conducted in private.
- (4) The Commissioner shall give a reasonable opportunity for the requester, the public authority and any third party concerned to make representations.
- ...
- (6) The Commissioner shall, as soon as practicable-
- (a) complete the review and make a decision with regard to the review; and
  - (b) notify the requester, the public authority and any third party concerned of the Commissioner's decision and the reasons for that decision.

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