



## Decision Notice

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**Decision 21/2022: Office of the Governor**

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**Reference no: 20220308-01**

**Decision date: 23 August 2022**

## Summary

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The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Office of the Governor (**Government House**) for a copy of any employment settlement agreement made with the ex-Commissioner of Police. Government House decided that the record fell outside the scope of the PATI Act by virtue of section 4(1)(b)(vi) of the PATI Act because it was created by the Attorney-General's Chambers in the course of carrying out its function to provide legal advice to the Government.

The Information Commissioner has found that Government House correctly determined that the PATI Act did not apply to the record in accordance with section 4(1)(b)(vi) of the Act. The Information Commissioner has affirmed Government House's internal review decision.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 4 (application).

The Appendix provides the text of this statutory provision and forms part of this Decision.

## Background

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1. On 13 January 2022, the Applicant filed a PATI request to the Office of the Governor (**Government House**) for “[a]ny and all employment settlements made by Government House with the Commissioner of Police in the last 12 months”.
2. On 24 January 2022, Government House provided an initial decision that denied the request because the settlement record was exempt under sections 23(1) (personal information) and 26(1) (information received in confidence).
3. On 25 January 2022, the Applicant made a timely request for an internal review.
4. On 8 March 2022, Government House issued an internal review decision that varied the grounds for the denial of access to the “Settlement and Release Agreement of the ex-Commissioner of Police”. Government House decided that the record was excluded from the PATI Act by virtue of section 4(1)(b)(vi), because the record was created by the Attorney-General's Chambers during the course of carrying out its function to provide legal advice to the Government. In the alternative, Government House relied upon the exemptions in sections 35(1) and (3) (legal professional privilege), 33 (Governor's

responsibilities), 23(1) (personal information), 33(1)(a) (prejudice to the effective conduct of public affairs), and 26(1)(a) (information received in confidence).

5. That same day, the Applicant made a timely application for an independent review by the Information Commissioner.

## Investigation

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6. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request for an internal review to a public authority. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
7. The 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 section 4(1)(b)(vi) was justified.
8. On 21 March 2022, the Information Commissioner's Office (**ICO**) notified Government House of this review. In light of the decision by Puisne Judge Shade Subair Williams in [Attorney General v Information Commissioner \[2022\] SC \(Bda\) 6 Civ \(25 January 2022\)](#), the ICO sought the voluntary cooperation of Government House to provide access to the settlement agreement for purposes of this review, which would facilitate an efficient review process. Government House voluntarily provided the Information Commissioner, only, with access to the record for this review. Government House expressly stated that this voluntary access did not indicate any disagreement with the Supreme Court's decision or the assertion of section 4 in this matter, nor was it intended to bind Government House or any other public authority in any future decisions.
9. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority and the applicant a reasonable opportunity to make representations. Government House and the Applicant were invited to make submissions to the Information Commissioner for her consideration. Both Government House and the Applicant provided submissions.

## Information Commissioner's analysis and findings

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10. In coming to this Decision, the Information Commissioner considered all the relevant submissions, or parts of submissions, made by the parties. She is satisfied that no matter of relevance has been overlooked.

### *Applicability of the PATI Act – section 4(1)(b)(vi)*

11. As Justice Subair Williams explained in [Attorney General v Information Commissioner](#), para. 24, the “scope of the application of the PATI Act may be determined by section 4 which lists the classes of material to which the legislation does not apply”. In accordance with section 4(1)(b), the PATI Act does not apply to records obtained or created by specified public authorities in the course of carrying out their functions. The Attorney-General’s Chambers (**AG’s Chambers**) is one of those public authorities, as set out in subsection 4(1)(b)(vi).
12. Although the PATI Act does not define the ‘functions’ of a public authority, section 7 of the Interpretation Act 1951 defines ‘functions’ as “powers conferred, or duties imposed, on the authority or officer by or under any provision of law”.
13. Records that relate to the general administration of these specified public authorities, however, continue to fall within the scope of the PATI Act by virtue of section 4(2). In [Attorney General v Information Commissioner](#), para. 37, Justice Subair Williams adopted the definition of ‘general administration’ set out by the Irish Information Commissioner, i.e., records relating to personnel, pay matters, recruitment, accounts, information technology, accommodation, internal organisation, office procedures and the like. Justice Subair Williams further agreed that records related to matters concerning the core business of the relevant public authority are not records relating to its general administration<sup>1</sup>.
14. In sum, for a record to be removed from the scope of the PATI Act by virtue of section 4(1)(b), 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 the record obtained or created by that public authority in the course of carrying out its functions?
  - [3] Does the record relate to that public authority’s general administration and come within the scope of the PATI Act by virtue of section 4(2)(b)?

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<sup>1</sup> See [Attorney General v Information Commissioner](#), at para. 40. In [Decision 02/2019, Office of the Governor](#), para. 20, the Information Commissioner adopted this definition of ‘general administration’ as applied by the Irish Information Commissioner. See also [Decision 09/2021, Human Rights Commission](#), para. 17; [Decision 05/2020, Human Rights Commission](#), at para. 15; and [Decision 19/2019, Internal Audit Department](#), at para. 19.

*Public authority's submissions*

15. Government House submitted that AG's Chambers reviewed and provided legal advice regarding the final settlement agreement, in the course of exercising its functions as the principle legal advisor to the Government, in accordance with section 71(1) of the [Bermuda Constitution Order 1968](#) (**Bermuda Constitution**).

*Applicant's submissions*

16. The Applicant sought to ensure that AG's Chambers did, indeed, create the settlement agreement. The Applicant asserted that if Government House negotiated the settlement agreement, it would have created records about it as well.
17. The Applicant also argued that to use section 4 of the PATI Act as a 'catch all' to avoid transparency or accountability regarding the Commissioner's departure is wrong and not in the spirit of the Act.

*Discussion*

18. The Information Commissioner considers Government House's reliance on section 4(1)(b)(vi) to deny access to the Settlement and Release Agreement of the ex-Commissioner of Police.

[1] Was the record obtained or created by one of the public authorities listed in section 4(1)(b)?

19. The Information Commissioner accepts that the final settlement agreement was created by AG's Chambers. During the course of the investigation, Government House confirmed that the final settlement agreement itself was created by AG's Chambers.
20. While the Applicant is correct that Government House may contain additional records related to the settlement agreement or discussion with the former Commissioner of Police, this PATI request was straightforward and sought only "employment settlements made by Government House with the Commissioner of Police".

[2] Was the record obtained or created by that public authority in the course of carrying out its functions?

21. In accordance with section 71 of the Bermuda Constitution, the Attorney General is the principal legal advisor to the Government, which includes the Governor.

22. The Information Commissioner accepts that AG's Chambers provided legal advice and created the final settlement agreement in the course of carrying out this constitutional function.

[3] Does the record relate to that public authority's general administration and come within the scope of the PATI Act by virtue of section 4(2)(b)?

23. As stated by Justice Subair Williams, "the core business of [AG's Chambers] is in its legal professional service which entails the provision of legal advice and representation for the benefit of its clients who may be engaged at any particular stage of the litigation process".<sup>2</sup> The creation of the final settlement agreement falls squarely within this constitutional function of AG's Chambers, rather than its general administration.

### *Conclusion*

24. The Information Commissioner is satisfied that Government House properly relied upon section 4(1)(b)(iv) of the PATI Act to refuse public access to the Settlement and Release Agreement of the ex-Commissioner of Police. This is because the record was created by AG's Chambers in the course of carrying out its functions under section 71 of the Bermuda Constitution and does not relate to its general administrations.
25. Because the Information Commissioner finds that the PATI Act does not apply to the settlement agreement, Government House's alternative reliance on the exemptions is not considered.

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<sup>2</sup> See [Attorney General v Information Commissioner](#), at para. 40.

## Decision

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The Information Commissioner finds that the Office of the Governor (**Government House**) was justified in denying access to the settlement agreement by virtue of section 4(1)(b)(vi) of the Public Access to Information (PATI) Act 2010, because it was created by the Attorney-General's Chambers in the course of carrying out its function under section 71 of the Bermuda Constitution Order 1968.

In accordance with section 48 of the PATI Act, the Information Commissioner affirms Government House's internal review decision.

## Judicial Review

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The Applicant, Government House, 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  
23 August 2022

## Appendix: Relevant statutory provisions

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### Public Access to Information Act 2010

#### Application

4 (1) Subject to subsection (2), this Act does not apply to—

...

(b) records obtained or created by any of the following public authorities in the course of carrying out their functions—

...

(vi) the Attorney General's Chambers;

...

(2) The reference to records in subsection (1) does not include records relating to the general administration of—

...

(b) any public authority referred to in subsection (1)(b).



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