

Decision Notice

Decision 20/2022: Department of Public Lands and Buildings

Title deeds of Tudor Farm

Reference no: 20201130

Decision date: 5 August 2022

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Department of Public Lands and Buildings (**Department**) for a copy of the title deeds of Tudor Farms. The Department refused the request under section 16(1)(a) of the PATI Act because the deed could not be found.

The Information Commissioner has affirmed the Department's refusal of access under section 16(1)(a) because the Department took all reasonable steps to locate the record before concluding that it could not be found.

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record cannot be found).

Public Access to Information Regulations 2014: regulation 5 (reasonable search).

Appendix 1 provides the text of these statutory provisions, and forms part of this Decision.

Background

1. Tudor Farm is an extensive complex located in Southampton Parish that consists of a number of buildings and sizable tracts of arable land. The Government of Bermuda purchased Tudor Farm on 12 May 1989 "to preserve the integrity of one of the few remaining agricultural units of its size in Bermuda".¹ The area is zoned as Agricultural Reserve and Open Space Reserve under the Bermuda Plan 2018.²
2. On 24 March 2020, the Applicant filed a PATI request to the Department of Public Lands and Buildings (**Department**) for:

a copy of the title of deeds of Tudor Farm. That is, all of the land zoned Agricultural Reserve and Open Reserve Spaces and situated at #2A and #4 Middle Road, Southampton purchased by the Government of

¹ Department of Agriculture & Fisheries Monthly Bulletin, September 1996 Vol. 67, No. 9, p. 74, referenced in the PLAN-0404-20-2020109-Objection-Letter to Inform Applicant of Objection, available at https://planningenergov.gov.bm/EnerGov_Prod/SelfService#/plan/0ecde180-3e49-4c41-9807-08609ba01c21?tab=attachments.

² The Draft Bermuda Plan 2018 zonings are available on the [Bermuda Planning Map Viewer](#).

Bermuda from A.J. Terceira Settlement Trust. (Bermuda Plan 2008 Zoning Maps, Map #15).

This was a freehold conveyance of property for \$2,900,000.00 on 12th May, 1989.

3. The Department provided the Applicant with an interim response on 12 June 2020 which:
 - a. gave the Applicant a copy of a land terrier map, showing the lots that make up Tudor Farm;
 - b. gave the Applicant the Norwood Map extract from the Land Title and Registration Office (**LTRO**), indicating the provisionally registered lots of the Government Title at Tudor Farm. The interim response also provided the Applicant with the URL link where the public could access the Norwood Map; and
 - c. gave the Applicant a scan of deed for the parcels just south of the Tribe Road, which forms part of Tudor Farm, but was not sought in the PATI request.
4. The Department's interim response also explained that the part of Tudor Farm relevant to the PATI request is the central area of the farm that is marked as lot no. 44. The Department further shared that it had searched the Government deed vault and files and could not find the deed for lot no. 44. The relevant area is not registered on the Norwood Plan which, according to the Department, would indicate that the LTRO did not have sight of the deed. The Department informed the Applicant that it would continue to look for the deed.
5. The Applicant did not receive an initial decision from the Department and sought an internal review within the statutory timeline.
6. Subsequently, a plan submitted by a construction company to convert existing buildings on Tudor Farm from office to residential was advertised in the Official Gazette on 18 September 2020.³ The application for planning permission was approved on 18

³ [GN0842/2020](#), 18 September 2020. An amended version of the advertisement on the plan relating to Tudor Farm was published on [GN0859/2020](#), 24 September 2020.

November 2020, although objection was received.⁴ The construction company received its building permit on 17 December 2020⁵.

7. On 27 November 2020, the Department issued an internal review decision informing the Applicant that it was unable to locate the deed, despite several searches.⁶
8. On 30 November 2020, the Applicant made a timely application for an independent review by the Information Commissioner.

Investigation

9. The application to the Information Commissioner 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.
10. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the public authority to determine whether its reliance on the administrative denial was justified.
11. On 11 December 2020, the Information Commissioner's Office (**ICO**) notified the Department of this review.
12. 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. The Department and the Applicant were invited to make submissions to the Information Commissioner for her consideration.
13. The ICO received submissions from the Department. The Applicant did not respond to the ICO's invitation to make submissions, but provided information during this review that the Information Commissioner considers below.

⁴ Both the Plan-0404-20 Decision Letter as well as the objections are available at https://planningenergov.gov.bm/EnerGov_Prod/SelfService#/plan/0ecde180-3e49-4c41-9807-08609ba01c21?tab=attachments.

⁵ Details are available for [Permit Number BR-0399-20](#).

⁶ The internal review decision was issued as a result of the Information Commissioner's review no. 20201029 ([Decision 16/2020](#), [Department of Public Lands and Buildings](#)).

Information Commissioner's analysis and findings

14. 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.

Records cannot be found – section 16(1)(a)

15. Public authorities are entitled under section 16(1)(a) to administratively deny access to records if the requested record does not exist or cannot be found after all reasonable steps have been taken to find it.
16. Regulation 5 of the PATI Regulations requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. Regulation 5(2) requires a public authority to document its efforts if it has been unable to locate the records.
17. When a public authority denies access to a record under section 16(1)(a) because the record does not exist or cannot be found, the Information Commissioner is not determining to a point of certainty whether the record does not exist or is lost. Rather, the Information Commissioner is required to assess whether the public authority took all reasonable steps to find the record. In assessing the reasonableness of the public authority's search, the Information Commissioner considers the following factors:
 - [1] the quality of the public authority's analysis of the request;
 - [2] the scope of the search that it decided to make on the basis of that analysis; and
 - [3] the rigor and efficiency with which the search was then conducted.
18. The specific circumstances in each case will inform the Information Commissioner's assessment.
19. Finally, the public authority bears the burden to establish, on the balance of probabilities, that the records do not exist or cannot be found after all reasonable steps have been taken to find them.

Public authority's submissions

20. The Department submitted that the Tudor Farm deed responsive to the PATI request could not be found. It is of the view that it has undertaken extensive search to locate the deed.

21. The Department understood the PATI request to be asking for a copy of the title deed for part of Tudor Farm which was purchased by the Government of Bermuda from the Terceira Settlement Trust on 12 May 1989 for \$2.9 million. The Department further understood that the Applicant would like a copy of the deed because they were interested in seeing any conditions of the transfer, and, specifically, if it included restrictive covenants requiring the land to always be used as a working farm. The Department understood that the Applicant was concerned that Tudor Farm was not being preserved as an agricultural unit.
22. The Department submitted that it searched the fireproof safes at the Government deed vault, where Government deeds were ordinarily stored at the time of the PATI request. The deed vault was searched in the span of a week on three or four occasions by an officer who was highly familiar with Estates records. The relevant officer was also the first point of contact for retrieving Estates and deeds records. On two occasions, the officer was accompanied by an Estates Surveyor who is highly familiar with Tudor Farm estates and Estates file system. Additionally, the deed vault was separately inspected by another officer within the Department.
23. The Department explained that there are over 2000 deed packet records in the deed vault. It would be unreasonable to open each packet to make sure that the responsive Tudor Farm deed had not been misplaced.
24. It also searched the following locations where records relating to Government deeds were ordinarily stored during the responsive time:
 - a. Correspondence hard copy file no. 38/48 for Tudor Farm, stored at the Estates Office, which was searched by an officer on three occasions in July 2020. Two other officers, including the Chief Surveyor, also searched the file to look for any reference to the deed location or a law firm for the vendor, or an indication if the deed may have been sent to a party external to the Government.
 - b. The Government network digital file and plan records on the Estates drive file. The Department explained that the drive is the working drive for Estates work. The file listing with deed and lease agreements lists were run through and searched by the link of the map referenced deed number and agreement Estates Property Management System (PIMS) number. A general search for Tudor Farm throughout the drive was applied.
 - c. PIMS deed and scanned agreement record listings were searched by the Chief Surveyor.

- d. Land Survey Section, Survey Plan files and document records were searched by an officer who was highly familiar with deeds and land title records and mapping.
 - e. The archived Public Works historic files at Fort Prospect. The search of this location was conducted twice, even though the site was closed due to mould issues.
25. In addition, the Department explained that it searched the following locations:
- a. Estates Land terrier map records with deed reference listings (stored in the drive), to establish deed number and locator references within the deed fault. The search was conducted by the Chief Surveyor.
 - b. Estates record of deeds transferred from the Department by Land Parcel Identification Number (LPIN) was searched by the Chief Surveyor.
 - c. Land Title Records and public mapping records.
 - d. Estates Concerto Asset Management Software System transferred from PIMS was searched by the Chief Surveyor.
26. The Department explained that, to locate the deed, it first inspected a terrier map that captures all Government-owned parcels of land marked up with responsive deed number. The number was checked against an excel spreadsheet of deeds by parish, which was held in Estates and Land Survey files. On the spreadsheet, a deed number is referenced to a document with an LPIN number, which verifies that the document was seen by the LTRO in 2007 and scanned with an LPIN number allocated to the parcel. The deed and LPIN numbers locate the scanned copy of the deed and document that the deed is in the fireproof safe in the vaults. The spreadsheet shows that there was no LPIN number associated to deed no. 44, i.e., the part of Tudor Farm responsive to the PATI request.
27. The Department explained that its office moved in or around 2007. Prior to the move, it was digitising the Government land deed filing system. The process involved removing physical deed packets from the old fireproof cabinets and verifying the old deed number against the excel spreadsheet. An LPIN number was assigned (in no order) and the number recorded against the old deed number. The documents were then scanned into a digital format and saved in the Government computer network. The hardcopy documents were then filed away into new fireproof cabinets, in their numerical LPIN order.

28. The Department submitted that, because no LPIN number was assigned to deed no. 44, this must have meant that the relevant deed could not be located during the digitisation process. The information it received from the LTRO confirmed this.
29. The Department explained that four staff members conducted the searches, which included the Chief Surveyor himself. It submitted that these individuals had high level of familiarity with the Estates records, Tudor Farm estates, estates file system, deed and land title records and mapping and deed management. The Department also contacted two of its officers to check if they had any knowledge on the location of the deed.
30. The Department submitted that it contacted the LTRO to obtain relevant information in the location of the relevant Tudor Farm deed. The Department was informed that the LTRO files were searched and the Land Title Registrar confirmed that the LTRO did not locate deed no. 44 when it was inputting all the Government Land Deeds into its registry system in 2007. The LTRO found a copy of a transfer notice in 1989 confirming the purchase, but not information on the deed itself.
31. The Department explained that it contacted the Attorney-General's Chambers (**AG's Chambers**) who advised that because it is not a deed depository, if the deed had passed through its possession back in 1989, it would have returned the deed to the Department. The Department submitted it would be time consuming to check if any archived correspondence files had any reference to the location of the deed.
32. The Department was aware of the police investigation in or around 2012 into the actions of a senior manager at the Department of Public Works that caused the police to seize some files as evidence relating to a building on Tudor Farm. It explained, however, that the investigation related to the expenditure of building works and the BPS would not have needed any of the title deeds for inspection. In any event, the Department contacted the Bermuda Police Service (BPS), who stated that it returned all files to the Department. The BPS's statement was corroborated by an officer within the Department who took delivery of the returned documents at that time.
33. The Department submitted that it also made an enquiry about the Tudor Farm deed to the Office of the Tax Commissioner, but to no avail.
34. The Department clarified that all steps to locate the records were conducted after the PATI request was filed but prior to the Information Commissioner's review.
35. The Department is concerned that the deed for a significant tract of Government land appears to be missing. It explained that it will continue to watch for the deed during its work and will advise the Applicant if it discovers the document in the future.

36. The Department is also seeking advice from AG's Chambers on how to address the missing deed.

Applicant's submissions

37. The Applicant did not respond to the ICO's formal invitation to make submissions. The Information Commissioner, however, takes into account the information provided by the Applicant throughout the course of this review.
38. The Applicant is concerned by the Department's failure to disclose a copy of an important Government document, i.e., a deed to Tudor Farm, which is a considerable acreage of valuable farmland in Southampton Parish. The Applicant explained that the Department is the stewards of public land and ignoring the fact that the deed is missing is not acceptable. The Applicant is of the view that someone must know what happened to the deed and must be held accountable.
39. The Applicant stated that one of the Estates Surveyors previously confirmed that the Ministry of Works and Engineering Lands, Buildings and Survey Division holds the deeds.
40. The Applicant explained that they wish to obtain a copy of the deed to identify specific stipulations or agreement on the sale of the property, i.e., "to preserve the integrity of one of the few remaining agricultural units of its size in Bermuda".
41. The Applicant accepted that new deeds can always be drawn, but was concerned that the original intent of the seller and understanding of the purchaser of the land would be lost. The Applicant was particularly concerned that Tudor Farm will be converted into a space for storage for a construction company and believed that such conversion would contradict the purpose of the sale of the land to the Government.
42. The Applicant explained their wish that Tudor Farm remain as it was intended.
43. In its correspondence with the Department as well as with the ICO, the Applicant suggested that the Department reach out to AG's Chambers, as it may have drafted the legal documentation and negotiated the purchase of Tudor Farm. The Applicant also suggested that the Department reach out to the attorneys who acted on behalf of the seller or previous owner.
44. During communications with the ICO, the Applicant suggested that the Department contact its former employee who was involved with the purchase of Tudor Farm.
45. The Applicant asked the Information Commissioner to conduct an independent review to determine the demise of the missing documents, to discover the motive behind the

documents' disappearance and to ensure that no new deeds will be drawn up that would contradict the wishes of the previous owners. The Applicant is of the view that a copy must exist somewhere.

46. The Applicant brought the Information Commissioner's attention to a criminal investigation that happened in or around 2012 and provided three newspaper articles for reference. The Applicant speculated that the Tudor Farm's title deed and bill of sale theft or disappearance might be embroiled in the criminal case.

Discussion

47. The Information Commissioner considers whether the Department took all reasonable steps to locate the Tudor Farm deed that is responsive to the PATI request.

[1] The quality of the public authority's analysis of the PATI request

48. The PATI request asked for a copy of the deed of the land zoned Agricultural Reserve and Open Reserve Spaces situated at #2A and 4 Middle Road, Southampton, which the Government purchased from A.J. Terceira Settlement Trust in 1989. The land is part of an area known as Tudor Farm.
49. In its interim response to the Applicant on 12 June 2020, the Department provided the Applicant with the Public Works land terrier map that shows the lots that make up Tudor Farm. The Department pointed the Applicant to an area marked as lot no. 44 as the area relevant to the PATI request. The Applicant did not challenge the Department's explanation.
50. The Information Commissioner is satisfied that the parties have the same understanding of the record which the PATI request is seeking, i.e., a copy of the deed for Tudor Farm, plot no. 44 and that the Department's analysis of the PATI request was adequate.

[2] The scope of the search that it decided to make on the basis of that analysis

51. The Department provided detailed submissions on the steps it took to locate the responsive deed. It searched the fireproof safes in the Government deed vault, where the Government deeds were ordinarily stored at the time of the PATI request, to no avail.
52. To find information on the possible location of the responsive deed, the Department searched locations where records relating to the Government deeds were ordinarily stored: correspondence hard copy file, Estates PIMS deed and scanned agreement record listings, Land Survey Section Survey Plan files and records as well as archived files at Fort Prospect. It also searched the Estates land terrier map records with deed

reference listings, Estates Record of deeds transferred from the Department by LPIN, land title and public mapping records, as well as the Estates Concerto Management Software System.

53. The Department expanded its search to external locations to obtain information that could potentially assist with identifying the location of the deed. It contacted the LTRO and the Office of the Tax Commissioners and, as suggested by the Applicant, AG's Chambers and the BPS. None of these steps led to the identification of the actual deed, or information on its location.
54. In light of the above, the Information Commissioner is satisfied that the scope of the Department's search was reasonable. Because there was nothing to suggest that the responsive Tudor Farm deed was misplaced in any of those packets or set of packets, the Department would have had to search each one of the 2000 packets. The Information Commissioner agrees with the Department that searching over 2000 deed packet records in the Government vault would have been unreasonable.
55. The Information Commissioner noted the Applicant's suggestions that the Department should contact its former employee who was involved in the purchase of Tudor Farm back in 1989, as well as the attorneys who acted on behalf of A.J. Terceira Settlement Trust as the seller or previous owner. The Information Commissioner is satisfied that the Department spoke to appropriate individuals within and external to its organisation to determine where the deed might be or what locations it should search. The PATI Act does not require the Department to contact individuals within the private sector, such as the lawyers acting on behalf of the sellers, for a copy of a record held by a private entity. The PATI Act only requires a public authority to search for records that are in its possession or custody, or are under its control, as defined by section 3 of the PATI Act.

[3] The rigor and efficiency with which the search was then conducted

56. The Information Commissioner is satisfied that the Department's search was conducted with adequate rigour and efficiency. All searches to locate the deed were conducted by individuals within the Department who have expertise in the Department's filing system, Estates records and Tudor Farm. There is nothing in the parties' submissions or information that suggests that those individuals were denied access to any potential locations of the deed. Some of the locations were also searched multiple times by more than one officer.
57. The Department reached out to the BPS, even though it is not required under the PATI Act to do so and despite its understanding that the BPS would have no need to inspect the deed while investigating the criminal case referred to by the Applicant. The

Department searched its archived files, even though the location storing those files was closed due to mould issues.

Conclusion

58. The Information Commissioner is satisfied that the Department was justified in relying on section 16(1)(a) to deny the PATI request because it took all reasonable steps to locate the responsive Tudor Farm deed before concluding that it could not be found.
59. The parties and the Information Commissioner agree that the missing deed is a cause of great concern. In this review, the Department relies on the administrative ground in section 16(1)(a) because a record cannot be found. Under the PATI Act, the question before the Information Commissioner is not whether the Department should have held the requested record, but whether the Department took all reasonable steps to locate the record prior to denying the PATI request.
60. It is beyond the Information Commissioner's jurisdiction to conduct a review to determine the demise of the missing documents, to discover the motive behind the documents' disappearance and to ensure that no new deeds will be drawn up that would contradict the wishes of the previous owners, as requested by the Applicant. It is also beyond the Information Commissioner's jurisdiction to probe on whether the deed was stolen, to ensure that any new deeds would honour the wishes of the land's previous owners, or to hold the Department accountable for not being able to locate the deed, beyond deciding this PATI request.
61. The Applicant's use of the PATI Act has confirmed for the public, though, that the deed is currently lost and it prompted a robust search for the deed by the Department. The Department has also expressed its concern with the missing deed and, on its own accord, has sought advice from AG's Chambers on how to address this situation. A key purpose of the PATI Act in section 2 is to increase the accountability of public authorities. In this case, the Applicant's PATI request has brought to light a deficiency in the Department's records and the Department has taken it upon itself to address the issue and keep the Applicant informed. The Applicant is also now in an informed position to continue engaging with the Department on this issue beyond the context of this PATI request.

Decision

The Information Commissioner finds that the Department of Public Lands and Buildings (**Department**) was justified in relying on section 16(1)(a) of the Public Access to Information (**PATI**) Act 2010 to administratively deny access to the records because it took all reasonable steps to locate them before deciding the records could not be found. In accordance with section 48 of the PATI Act, the Information Commissioner affirms the Department's internal review decision.

Judicial Review

The Applicant, the Department of Public Lands and Buildings, 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
5 August 2022

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Refusal of request on administrative grounds

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

(a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;

...

Public Access to Information Regulations 2014

Reasonable search

5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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