



Decision Notice

Decision 22/2022: Office of the Parliamentary Registrar

Reference no: 20210504

Decision date: 26 August 2022

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Office of the Parliamentary Registrar (**Parliamentary Registry**) for the Public Notices from the 2020 General Election. The Parliamentary Registry denied public access to the Public Notices under section 16(1)(a) of the PATI Act because the records could not be found. The Parliamentary Registry also refused access to the Nomination Papers from the 2020 General Election under section 37(1) of the PATI Act because their disclosure is prohibited by the Parliamentary Election Act 1978 (**Election Act**).

The Information Commissioner has found that the Parliamentary Registry's reliance on the administrative ground in section 16(1)(a) was justified because the Parliamentary Registry took all reasonable steps before concluding that the Public Notices could not be found. The Information Commissioner has also found that the reliance on section 37(1) of the PATI Act was not justified because disclosure of the Nominations Papers is not prohibited by the Election Act. The Information Commissioner has varied the Parliamentary Registry's decision and has found that some information in the Nomination Papers is exempt as personal information under section 23(1).

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record cannot be found); section 21 (public interest test); section 23 (personal information); section 24 (definition of personal information).

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

Parliamentary Election Act 1978: section 29 (duties of Returning Officer); section 31 (delivery of parliamentary registrars); section 75 (retention of documents); Schedule.

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

Background

1. On 1 March 2021, the Applicant filed a request under the Public Access Information (PATI) Act 2010 to the Office of the Parliamentary Registrar (**Parliamentary Registry**) for copies of the notices published at every election hall that showed the names of each candidate, their proposer and their seconder (**Public Notices**). For clarity and to persuade

the Parliamentary Registry to disclose the records, the PATI request referred to paragraph 1 of the Schedule to the Parliamentary Election Act 1978 (**Election Act**), which is discussed below.

2. On 13 April 2021, the Head of Authority for the Parliamentary Registry issued a decision on the Applicant's PATI request¹. The decision stated that the PATI request was refused under section 37(1) of the PATI Act because disclosure of the records was prohibited by section 75 of the Election Act.
3. On 4 May 2021, the Applicant made a timely application for an independent review by the Information Commissioner.

Investigation

4. The application was accepted as valid. Because the Parliamentary Registry's decision was made by the Head of Authority, and the intention of the parties was for the Information Commissioner to issue a decision on this matter, the Information Commissioner deemed that a referral of the Applicant's internal review request to her had taken place in accordance with section 44 of the PATI Act. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
5. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Parliamentary Registry to determine whether its reliance on the exemption was justified.
6. On 16 June 2021, the Information Commissioner's Office (**ICO**) notified the Parliamentary Registry of the valid application and asked it to provide the Information Commissioner with access to the withheld records. In response to the request, the Parliamentary Registry submitted a set of 86 completed Nomination Papers from the 2020 General Election².
7. During this review, the Parliamentary Registry clarified for the Applicant and the ICO that the requested Public Notices could not be found and, therefore, the Applicant's request was denied under section 16(1)(a) of the PATI Act. The Parliamentary Registry further clarified that the exemption in section 37(1) of the PATI Act was invoked to deny access

¹ The Parliamentary Registrar is the Information Officer and the Head of Authority for the Office of the Parliamentary Registrar. See [Information Statement for the Parliamentary Registration Office](#) (1 April 2015).

² A blank copy of the [Nomination Paper](#) is available on Parliamentary Registry website.

to the Nomination Papers because their disclosure was prohibited by section 75 of the Election Act. The Applicant confirmed to the Information Commissioner that they sought an independent review of the Parliamentary Registry's reliance on sections 16(1)(a) and 37(1) of the PATI Act.

8. 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 Parliamentary Registry and the Applicant were invited to make submissions to the Information Commissioner for her consideration and both provided submissions.

Information Commissioner's analysis and findings

9. 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.

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

10. Section 16(1)(a) allows public authorities to deny a PATI request if the requested record does not exist or cannot be found after all reasonable steps have been taken to locate it.
11. Regulation 5 of the PATI Regulations 2014 requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. A public authority is required to document its efforts if it has been unable to locate the records.
12. In cases where access to public records is denied under section 16(1)(a) because the record is claimed to be non-existent or could not be found, the Information Commissioner is not assessing the existence of the record to the point of certainty. Instead, she is required to assess the reasonableness of the search conducted by the public authority relying on the provision. In doing so, the Information Commissioner considers the following factors³:

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

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

³ [Decision 04/2017](#), [Department of Health](#), para. 49 and more recently [Decision 20/2022](#), [Department of Public Lands and Buildings](#), para. 17.

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

13. The specific circumstances in each case will inform the Information Commissioner's assessment.
14. The public authority bears the burden to establish that the records did not exist or could not be found after taking all reasonable steps to find them.

Public authority's submissions

15. The Parliamentary Registry explained that the completed Public Notices, referred to in the PATI request and paragraph 1 of the Schedule to the Election Act, are displayed on the door of each polling room or station at the end of nomination day. The Public Notices are left on the door until the end of polling day. They are not returned to the Parliamentary Registry.

Applicant's submissions

16. The Applicant highlighted that, pursuant to section 75(1) of the Election Act, the Parliamentary Registry is required to "retain in safe custody for a period of one year all documents relating to a parliamentary election".

Discussion

17. The Information Commissioner considers the Parliamentary Registry's reliance on section 16(1)(a) to deny access to the Public Notices.

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

18. The Parliamentary Registry ultimately understood the PATI request as seeking the Public Notices. Although the request did not explicitly refer to the year of the relevant General Election, the request referred to a provision of the Election Act requiring the Parliamentary Registry to retain certain election records for a year. Because the PATI request was made in 2021, the Parliamentary Registry understood the request to be asking for records from the 2020 General Election, as can be seen in the Head of Authority's decision.
19. The Parliamentary Registry initially viewed the PATI request as asking for the Nomination Papers from the 2020 General Election, and refused the request under the exemption in section 37(1) of the PATI Act, as explained below in paragraphs 32-34. This confusion is understandable because the Nomination Papers contain the same information sought by the PATI request, i.e., the names of the candidates as well as their proposers and seconders.

20. In light of the above, the quality of the analysis of the PATI request was adequate.

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

21. During this review, the Parliamentary Registry clarified to both the Applicant and the ICO that the Public Notices sought in the PATI request could not be found. The explanation that the Public Notices are left at the polling room or station was provided by the Parliamentary Registrar herself, informed by her familiarity with the work and practices of her office.

22. The Parliamentary Registrar provided detailed explanation that the public notices were posted on the door of each polling room or station at the end of the nomination day, e.g., 10 September 2020, until the close of the polling day, e.g., 1 October 2020. The Public Notices are not returned to the Parliamentary Registrar.

23. The Information Commissioner notes that the Election Act does not require the Returning Officers to return the Public Notices, nor does it require the Parliamentary Registry to retain the Public Notices.

24. Given this, the Information Commissioner is satisfied that the scope of the Parliamentary Registry' search was adequate under the circumstances.

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

25. The Information Commissioner is satisfied that, under these circumstances, the Parliamentary Registry conducted the search with appropriate rigour and efficiency. There is nothing to suggest that the Parliamentary Registrar was mistaken or lacks veracity on this point. No other evidence contradicts the submissions by the Parliamentary Registry. Requiring the Parliamentary Registry to take further steps to search for records that it knows, as a matter of practice, are not returned or retained, would be unreasonable.

Conclusion

26. The Information Commissioner is satisfied that the Parliamentary Registry justified its reliance on section 16(1)(a) because all reasonable steps were taken to locate the Public Notices before concluding that they could not be found.

Disclosure prohibited by other legislation – section 37(1)

27. Section 37(1) of the PATI Act allows public authorities to refuse public access to a record whose disclosure is prohibited by a statutory provision other than the PATI Act.

28. The mandatory nature of a prohibition on disclosure in a provision may be indicated by the use of the word 'shall' and an accompanying provision setting out penalties for unauthorised disclosures. If the relevant statutory provisions only apply when particular functions or duties of a public authority have been engaged, the public authority must identify these functions or duties and explain how the records fall within the prohibition.
29. The exemption in section 37(1) is not subject to the public interest test.
30. In sum, to rely on section 37(1), public authorities must consider the following⁴:
 - [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?
31. A public authority bears the burden of showing that, on the balance of probabilities, it has provided sufficient support to justify applying the exemption.

Public authority's submissions

32. The Parliamentary Registry submitted that the disclosure of the Nomination Papers is prohibited by section 75(2) of the Election Act.
33. The Parliamentary Registry explained that, as a matter of routine, the Nomination Papers were submitted by the Returning Officers to its office at the end of nominations for inspection and filing along with other forms. The Nomination Papers and those forms are then used by the Parliamentary Registry to create ballot papers. The Parliamentary Registry was requested to submit a copy of any written policy or process document that supports its submission, but no response was received to this request.
34. The Parliamentary Registry noted the Applicant's claim that records from prior elections that are similar to what is being sought in this review, were provided to them. The Parliamentary Registry did not address whether this had occurred in the past, but emphasised that it is not prepared to disclose the Nomination Papers unless ordered to do, to ensure the protection of its office and the Parliamentary Registry.

⁴ See, for example, [Decision 27/2019, Bermuda Health Council](#), para. 38 and more recently [Decision 18/2022, Ministry of Health Headquarters](#), para. 167.

Applicant's submissions

35. The Applicant is concerned with the Parliamentary Registry's refusal and submitted that it does not meet a responsibility to maintain an open, transparent and democratic process such as the general election.
36. The Applicant submitted that the Parliamentary Registry's responsibility does not end with the conclusion of a general election. The Applicant maintained that the Parliamentary Registry's refusal contradicts the law that constructs the election process to inform the electorate of the choices available to them.
37. The Applicant referred to paragraph 1 of the Schedule to the Election Act which states that the Public Notices "shall be displayed conspicuously on or near the main door of the election". The Applicant maintains that what they are requesting is effectively information that was already in the public domain, and not information that would compromise any confidentiality.
38. Finally, the Applicant explained that they are seeking the records for research purposes and does not believe that disclosure could harm any public interest.

Discussion

39. The Information Commissioner considers the Parliamentary Registry's reliance on section 37(1) to deny public access to the 86 Nomination Papers from the 2020 General Election.

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

40. The Parliamentary Registry stated that disclosure of the Nomination Papers is prohibited by section 75 of the Election Act, which reads:

(1) The Registrar shall retain in safe custody for a period of one year all documents relating to a parliamentary election delivered to him by a Returning Officer pursuant to this Act and shall then, unless otherwise directed by an order of the Supreme Court, cause them to be destroyed.

(2) The Registrar shall not, except by or under the order of the Supreme Court, permit any other person to have access to or to inspect the documents retained by him under subsection (1).

41. Given the provision uses the word “shall not”, the Information Commissioner is satisfied that section 75(2) of the Election Act, read together with subsection (1), amounts to a mandatory prohibition on disclosure.

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

42. The mandatory prohibition in section 75(1) applies to records that are: (a) relating to a parliamentary election and (b) delivered to the Parliamentary Registrar by a Returning Officer pursuant to the Election Act.

43. The Nomination Papers considered in this review clearly relate to a parliamentary election, specifically the 2020 General Election.

44. The Information Commissioner also accepts the Parliamentary Registry’s submission that the Returning Officers provided the Nomination Papers to the Parliamentary Registry at the end of nominations. She is not satisfied, however, that the delivery of the Nomination Papers was conducted pursuant to the Election Act.

45. The Election Act expressly identifies the election documents that Returning Officers must deliver to the Parliamentary Registry. Paragraph 11 of the Schedule to the Election Act requires delivery of the counted, rejected, spoilt and used ballots papers by a Returning officer to the Parliamentary Registry. A Returning Officer must also deliver the parliamentary registers, as set out in section 31(2) of the Election Act. The restrictions on public disclosure of these election documents in section 75(2) is consistent with the well-established need in a democracy to protect the secrecy of the ballot⁵. This principle is recognised in section 60 of the Election Act, as well as election law throughout the Commonwealth⁶.

46. In contrast, there is no express provision under the Election Act that requires the delivery of Nomination Papers by a Returning Officer to the Parliamentary Registry in a contested election. Nor has the Parliamentary Registry provided evidence of any direction or policy to do so pursuant to section 29(4) of the Election Act, although the ICO invited this

⁵ See, for example, the Parliamentary Assembly of the Council of Europe’s Resolution 1590 (2007) ‘[Secret ballot – European code of conduct on secret balloting, including guidelines for politicians, observers and voters](#)’ (23 November 2007), accessed 19 August 2022. See also International Institute for Democracy and Electoral Assistance, ‘[International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections](#)’, (1 June 2002), pp. 71-72, accessed 22 August 2022.

⁶ See, for example, section 104 of the [Elections Act \(2021 Revision\)](#) of the Cayman Islands (revised as at 31 December 2020), accessed 19 August 2022; sections 163 and 281.6(1) of the [Canada Elections Act](#) (last amended on 28 June 2021), accessed 19 August 2022; and section 56 of the [Parliamentary Elections Act \(Chapter 218\)](#) (15 April 2011), accessed 19 August 2022.

evidence. In other jurisdictions, the inclusion of nomination papers as part of the protected election documents (when it occurs) may be clearly stated. For example, the nomination papers for candidates for a federal general election or by-election in Canada states:

Public Inspection

Any person may examine the completed Nomination Paper of a confirmed candidate at the office of the returning officer during the election period. After the election period, the Nomination Paper is submitted to the Chief Electoral Officer and becomes a protected election document. The Nomination Paper may be shared with the Commissioner of Canada Elections to ensure that the [Canada Elections Act (**CEA**)] is complied with and enforced. It may also be shared within Elections Canada to administer federal election voting procedures and the political financing provisions of the CEA⁷.

47. In this case, while the Returning Officers may give the Parliamentary Registry the Nomination Papers as a matter of convenience or traditional practice, this does not amount to the delivery of an election documents pursuant to a statutory requirement in the Election Act. As the Information Commissioner has previously explained in [Decision 12/2018, Ministry of Finance Headquarters](#), paragraph 108, “[a]s part of the good governance reforms in the public service to promote transparency and improve accountability, information previously protected as a matter of policy or practice within government is precisely the type of information to which the PATI Act now provides public access, unless it properly falls within a listed exemption”, or in this case, unless the Returning Officer is expressly required to deliver the document to the Parliamentary Registry pursuant to the Election Act.
48. The purposes of section 2 of the PATI Act include to increase transparency and eliminate unnecessary secrecy with regard to information held by public authorities. Treating the practice as something that is performed pursuant to the Election Act and categorising the Nomination Papers as records that fall within section 75(1) of the Election Act leads to unnecessary secrecy. Most of the information in the Nomination Papers was already available to the public. Furthermore, the Nomination Papers are public records related to democratic elections that are held in trust on behalf of Bermudians and residents.

⁷ [‘Nomination Paper of a Candidate at a Federal General Election or By-election’](#) (EC 20010, April 2020), p.5, accessed 19 August 2022.

49. Given the above, the Information Commissioner is not satisfied that the Nomination Papers fall within the prohibition on disclosure in section 75(2) of the Election Act. Consequently, she is not satisfied that the Parliamentary Registry was justified in relying on section 37(1) of the PATI Act to deny access to the Nomination Papers at issue.

Conclusion

50. The Parliamentary Registry was not justified to deny public access to the 2020 General Election Nomination Papers under section 37(1) of the PATI Act because the disclosure of these records is not prohibited by section 75(2) of the Election Act.

Personal Information – section 23(1)

51. Under section 23(1) of the PATI Act, public authorities may refuse access to a record if it consists of personal information, i.e., information about an identifiable individual as defined by section 24(1). Certain information is excluded from the definition of personal information in section 24(1), which is not relevant in this case.
52. The exemption in section 23(1) does not apply to limited circumstances set out in 23(2). Relevant in this case is section 23(2)(d), which states that the exemption does not apply to “information that was given to the public authority concerned by the individual to whom it relates and the individual was informed on behalf of the authority, before the information was given, that the information belonged to a class of information that would or might be made available to the general public”.
53. The exemption for personal information is subject to the public interest test. This means that a record consisting of a third party’s personal information should be disclosed if the public interest would, on balance, be better served by disclosure. When considering the public interest against and in favour of disclosing personal information, public authorities should take into account the following factors⁸:
- a. Whether disclosure will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations;
 - b. Whether disclosure would be fair to the individual under all of the circumstances, including a consideration of whether sensitive personal information was involved, the potential consequences of disclosure on the individual and the individual’s expectation of privacy; and

⁸ [Decision 02/2019](#), [Office of the Governor](#), para. 51.

- c. Whether disclosure of the personal information is necessary to further the public interest that have been identified.
54. In sum, to appropriately rely on the personal information exemption in section 23(1), public authorities must consider⁹:
- [1] Whether the records consists 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 exemptions in section 23(1) apply to the record?
 - [4] If the exemption is engaged, whether the balance of the public interest requires disclosure?
55. The personal information exemption is the only exemption that that Information Commissioner will invoke on her own accord, as has occurred in this case.

Discussion

56. The Information Commissioner considers the applicability of the personal information exemption in section 23(1) to deny public access to the 86 Nomination Papers for the 2020 General Election.
- [1] Whether the records consists of information about an identifiable individual?
57. The Nomination Papers contain information about the candidates and their proposals as well as seconders, specifically:
- a. Names, addresses and signatures of the candidates, proposers and seconders;
 - b. Professions or occupations (**professions**), the relevant constituency and the political affiliations of the candidates.
58. This constitutes information about identifiable individuals.

⁹ [Decision 02/2019](#), [Office of the Governor](#), para. 56.

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

59. None of the exclusions in section 24(2) is applicable to the information about individuals identified in the Nomination Papers.

[3] Whether any of the exceptions to the exemptions in section 23(1) apply to the record?

60. Under section 23(2)(d), the personal information exemption does not apply to information that was given to the public authority by an individual who was informed, prior to giving their information, that the information was in a class of information that would be made available to the general public.
61. Here, the candidates, proposers and seconders provided their information for the Nomination Forms after being informed that the Public Notice would make available to the public the following information: their names, along with the candidates' political affiliations and the constituencies which they wish to represent.
62. Paragraph 1 of the Schedule to the Election Act requires the names of the candidates and their respective proposers and seconders, the candidates' political affiliations as well as the constituencies they wish to represent to appear in the Public Notices. The Public Notices should be "displayed conspicuously on or near the main door of the election room". This provision was already in place before the candidates, proposers and seconders completed their Nomination Forms in 2020. The Information Commissioner is satisfied that the candidates, proposers and seconders were informed on behalf of the Parliamentary Registry that some of their personal information belonged to the class of information that would be made available to the public in the Public Notices.
63. The exception in section 23(2)(d) to the exemption for personal information is applicable to the names of the candidates, proposers and seconders, as well as the candidates' political affiliations and relevant constituencies. This information cannot fall within the exemption for personal information.

[4] If the exemption is engaged, whether the balance of the public interest requires disclosure?

64. The Information Commissioner considers whether the balance of the public interest requires disclosure of the home addresses and signatures of the candidates, proposers and seconders, or the candidates' professions.

65. There is a general public interest in transparency and the Information Commissioner agrees with the Applicant that a general election should be an open and transparent process. The Information Commissioner is not convinced, however, that disclosure of the addresses and signatures of the candidates, proposers and seconders in the Nomination Papers is a prerequisite for a democratic, open and transparent election. Further, in this case, the request for this information is made after the conclusion of the election.
66. Disclosure of this information would also be unfair to the individuals. As noted above, paragraph 1 of the Schedule to the Election Act clearly sets out the type of personal information of the candidates, proposers and seconders that will have to be disclosed in the Public Notice. It is therefore reasonable and legitimate for candidates, proposers and seconders to expect that other information about them, specifically their home addresses and signatures, to be kept confidential from the public. Disclosure of the home address and signatures might also lead to negative consequences for the individuals, such as unwelcome visits to their residences or signature forgery.
67. On balance, the public interest would be better served by non-disclosure of the addresses and signatures of the candidates, proposers and seconders in the Nomination Papers at issue. The public interest would also be better served by non-disclosure of the professions of the candidates who were not elected as members of the House of Assembly or appointed as members of the Senate, after the conclusion of the election. While the Information Commissioner accepts that disclosure of the information on the profession of all candidates during the election period would be in the public interest because it could help voters to cast an informed vote, in this case the disclosure in response to the PATI request would be made after the 2020 election was concluded. Furthermore, details about the unsuccessful candidates' professions was not necessarily available in the public domain during the election, unlike the names of the candidates, proposers and seconders that were published in the Public Notices.
68. In contrast, the public interest would be better served by the disclosure of the professions of the candidates who became members of either the House of Assembly or the Senate. At the time of the PATI request, more detailed information relating to the professions of these candidates was already available to the public in the individuals' published Registers of Interest¹⁰. Even in the absence of such documents, there is a strong interest in the public being informed of the professions of the members of Parliament, because the information is helpful for the public to understand the

¹⁰ The [Register of Interest Forms of the Members of Parliament](#) and the [Register of Interest Forms of the Members of Senate](#) are available on www.parliament.bm, accessed 19 August 2022.

members' professional backgrounds and experience, as well as to understand potential conflicts of interest. Candidates who later became members of the House of Assembly or Senate have less of a reasonable expectation that information about their professions would be kept confidential.

Conclusion

69. The personal information exemption in section 23(1) is not engaged for the names of the candidates, proposers and seconders, nor for the candidates' political affiliations and relevant constituencies by virtue of section 23(2)(d) of the PATI Act.
70. The personal information exemption is engaged for addresses and signatures of the candidates, proposers and seconders, and the balance of the public interest favours maintaining the confidentiality of this information.
71. Finally, the personal information exemption is also engaged for the candidates' professions. The public interest would be better served, however, by the disclosure of information about the professions of candidates who were elected or appointed as members of Parliament. The balance of the public interest favours maintaining the confidentiality of the professions information for individuals who were not elected or appointed.

Conclusion

72. The Information Commissioner is satisfied that the Parliamentary Registry properly relied upon section 16(1)(a) of the PATI Act to refuse public access to the Public Notices because all reasonable steps were taken to locate them before concluding that they no longer exist.
73. The Information Commissioner is not satisfied that the Parliamentary Registry justified its reliance on section 37(1) of the PATI Act to deny access to the Nomination Papers.
74. Finally, the exemption for personal information in section 23(1) is engaged for the personal information in the Nomination Papers. The balance of the public interest requires that following personal information remain confidential: the home addresses of the candidates, proposers, and seconders, as well as the professions of the candidates not elected or appointed as members of Parliament. The public interest would be better served, however, by the disclosure of the information about the professions of candidates who were elected or appointed as members of Parliament.

Decision

The Information Commissioner finds that the Office of the Parliamentary Registrar (**Parliamentary Registry**) was justified in administratively denying access to the Public Notices under section 16(1)(a) of the Public Access to Information (**PATI**) Act 2010, because all reasonable steps were taken before the Parliamentary Registry concluded that they could not be found. The Information Commissioner further finds that the Parliamentary Registry was not justified in relying on section 37(1) of the PATI Act to deny access to the Nomination Papers because the disclosure of these records is not prohibited by section 75(2) of the Election Act 1978. The Information Commissioner also finds that parts of the Nomination Papers are exempt under the personal information exemption in section 23(1) of the PATI Act and disclosure is not in the public interest.

In accordance with section 48 of the PATI Act, the Information Commissioner:

- affirms the Parliamentary Registry's administrative denial of access to the Public Notices under section 16(1)(a);
- reverses the decision to deny access to the Nomination Papers under section 37(1) of the PATI Act;
- varies the refusal of parts of the Nomination Papers to deny public access to personal information under section 23(1); and
- orders the Parliamentary Registry to disclose the redacted records, as instructed in the Confidential Annex, which forms part of this Decision.

The Information Commissioner requires the Parliamentary Registry's compliance as directed by this Decision and Order, on or before **Friday, 7 October 2022**.

Judicial Review

The Applicant, the Office of the Parliamentary Registrar, 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.

Enforcement

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



Gitanjali S. Gutierrez
Information Commissioner
26 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 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.

Personal information

- 23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.
- (2) Subsection (1) does not apply if –
- (a) subject to subsection (3), the information concerned relates to the requester;
 - ...
 - (d) the information was given to the public authority concerned by the individual to whom it relates and the individual was informed on behalf of the authority, before the information was given, that the information belonged to a class of information that would or might be made available to the general public; or
 - ...
- (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—
- ...

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.

...

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.

Parliamentary Election Act 1978

Duties of Returning Officers

- 29 ...
- (4) The Registrar may, subject to this Act, give Returning Officers generally or any particular Returning Officer such directions as he may think necessary and appropriate for ensuring the efficient and orderly conduct of any parliamentary election and it shall be the duty of each Returning Officer to conform to any directions so given.
- ...

Delivery of parliamentary registers etc. to Returning Officer

- 31 (1) Before eleven o'clock in the forenoon of nomination day in any parliamentary election, the Registrar shall deliver to the Returning Officer the parliamentary register for that constituency certified under the Registrar's hand to be correct .
- (2) The Returning Officer shall retain the parliamentary register in his custody until the conclusion of the parliamentary election and shall then deliver it back to the Registrar.

Registrar to retain documents

- 75 (1) The Registrar shall retain in safe custody for a period of one year all documents relating to a parliamentary election delivered to him by a Returning Officer pursuant to this Act and shall then, unless otherwise directed by an order of the Supreme Court, cause them

to be destroyed.

(2) The Registrar shall not, except by or under the order of the Supreme Court, permit any other person to have access to or to inspect the documents retained by him under subsection (1).

Schedule

RULES FOR THE TAKING OF A POLL

1 When a poll is required to be taken at any parliamentary election, a public notice of the poll shall be given by the Returning Officer as soon as the period for acceptance of the nominations is closed. The names of all candidates nominated for the constituency together with the name of the parties to which they belong or the word “independent” if they are so described in the election document and the names of their respective proposers and seconders shall appear in the notice together with the date of polling day and the hours when the poll will be open. The notice shall be displayed conspicuously on or near the main door of the election room.

...

11 (1) On the completion of the counting of the votes the Returning Officer in the presence of such of the candidates as may choose to attend, shall seal up in separate packets all—

- (a) counted ballot papers;
- (b) rejected ballot papers;
- (c) spoilt ballot papers; and
- (d) unused ballot papers in his possession,

and shall endorse on each packet a description of its contents, the date of the election, and the name of the constituency.

(2) The Returning Officer shall then deliver all the aforesaid packets so endorsed to the Registrar together with a statement showing the total number of ballot papers prepared by him for the election and accounting for them all under one of the heads above mentioned.

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