

## Decision Notice

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**Decision 27/2022: Office of the Governor**

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### **Records of appointment**

**Reference no: 20220130**

**Decision date: 17 November 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**) to inspect Government House's record of appointments made by instruments under the Public Seal. Government House disclosed a number of records in response to the PATI request. The Applicant, however, challenges the completeness of the disclosed records, as well as Government House's decision to grant access by providing copies of the records rather than the opportunity to inspect them.

The Information Commissioner has found that Government House did not conduct a reasonable search when it initially responded to the PATI request. Government House conducted additional searches during this review, which satisfied the reasonable search requirements in section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations. The Information Commissioner has further found that under section 17(2)(iv) and (3) of the PATI Act, Government House was justified in providing the Applicant with access to responsive records in a different manner than was requested. Because Government House has provided the Applicant with access to the additional records, the Information Commissioner does not require Government House to take any further action in relation to this review.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 12(2)(b) (reasonable search); section 17 (manner of access).

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

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1. On 1 September 2021, the Applicant sent the following Public Access to Information (**PATI**) request to the Office of the Governor (**Government House**) via email:

The Governor by way of the Bermuda Constitutional Order 1968 has the power and duties to make various public appointments "by instrument under the Public Seal" [(instruments of appointment)]... This is a request to see the recording book or file or other document via which Government House keeps its own

record of appointments made by instrument under the Public Seal in chronological order of the appointments.

2. The Applicant did not receive an initial decision by 13 October 2021, the statutory deadline. In the absence of an acknowledgement of the PATI request and an initial decision from Government House, the Applicant sent a follow up email on 27 October 2021. On the next day, Government House informed the Applicant that it could not locate the Applicant's 1 September 2021 PATI request email<sup>1</sup>.
3. In correspondence on 29 October 2021, the Applicant clarified to Government House that their PATI request sought to inspect instruments relating to the appointments of the following posts: Advisory Committee—Prerogative of Mercy; Senate; Premier and other Ministers; Junior Ministers; Chief Justice, Puisne Judges; Court of Appeal Judges; Public Service Commission; and the Ombudsman from 1 January 2017 to the date of the request, 1 September 2021. Upon being asked that same day to resubmit their PATI request (which would reset the statutory deadline for an initial response), the Applicant sought an internal review by the head of authority of their original PATI request. The Applicant also sought confirmation of the correct head of authority.
4. In response, Government House informed the Applicant on 30 October 2021 that the Deputy Governor was the head of authority. Government House further explained that it did not have the current list of appointments in a consolidated form and retrieving the responsive records will "take some considerable work". Nevertheless, on 2 November 2021, the Governor sent a formal acknowledgement of Government House's receipt of the internal review request by the applicant.
5. On 22 December 2021, Government House issued its internal review decision<sup>2</sup>. The internal review decision was initially signed by the Deputy Governor but then amended to clarify that it was signed in her capacity as the Acting Governor. The internal review decision provided the Applicant with a number of records responsive to the PATI request, including the instruments relating to the appointments of a Senator, a Minister, various Puisne Judges and Assistant Justices as well as the Ombudsman. The internal review decision also explained that no appointments have been made to the Advisory Committee—Prerogative of Mercy during the requested timeframe. The decision further explained that Government House was unable to conduct a proper search because part

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<sup>1</sup> Government House explained shortly after that the Applicant's email was located in the junk email folder and apologised for the delay this caused.

<sup>2</sup> Issued in response to the Information Commissioner's [Decision 22/2021](#), [Government House](#).

of its files rooms were inaccessible due to ongoing renovations. Government House undertook to do a proper search as soon as reasonably possible.

6. On 30 January 2022, the Applicant made a timely application for an independent review by the Information Commissioner of the Department's internal review decision.

## Investigation

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7. 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.
8. On 18 February 2022, the Information Commissioner's Office (**ICO**) notified Government House of the valid review application. The Information Commissioner determined that early resolution was appropriate and the parties agreed to attempt it. Due to changes in the circumstances, however, the Information Commissioner concluded that early resolution was not successful and commenced a review under section 47 of the PATI Act.
9. During this review, the Applicant confirmed that they were no longer interested in the instructions of the appointments for the Advisory Committee—Prerogative of Mercy, members of the Senate, Premier and other Ministers, Junior Minister, Public Service Commission and the Ombudsman. They further confirmed that they still sought the instruments of appointment of all judges, which would include Assistant Justices, for the period of 1 January 2017 to 1 September 2021.
10. The Applicant also requested that the Information Commissioner address the confusion around who conducted, or was supposed to conduct, the internal review.
11. During this review, Government House made additional disclosures to the Applicant of records responsive to the narrowed scope of the PATI request.
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. Both the Government House and the Applicant were invited to comment on the issues under review and made submissions.

## Information Commissioner's analysis and findings

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13. In coming to this Decision, the Information Commissioner considered all of the relevant information provided by the parties. She is satisfied that no matter of relevance has been overlooked.

### *Preliminary issue – section 43(1) internal review by head of authority*

14. The Information Commissioner reviews a decision made by the head of the authority, or any failure by the head of a public authority to make a decision, under section 43.
15. In accordance with section 43(1) of the PATI Act, an internal review of a decision by a public authority must be conducted by the head of the public authority concerned.
16. If a head of the public authority issued an initial decision<sup>3</sup>, the internal review request of that decision must be referred by the relevant authority to the Information Commissioner for her independent review, by virtue of section 44(1) and (2). Column 2 of the Schedule to the PATI Act designates the head of the public authorities. It is important to note that the designation of the head of the authorities in the Schedule to the PATI Act attaches to the post, and not to the individuals in those posts.

### *Public authority's submissions*

17. Government House explained that the Deputy Governor was the Acting Governor for the periods of 22-30 October 2021 and 17-22 December 2021. Government House acknowledged that it was a series of internal miscommunications which resulted in it not issuing an initial decision within the statutory timeline.
18. Government House explained that, when it received the ICO's notification on 22 December 2021 of a related review preceding this one<sup>4</sup>, the Deputy Governor in her capacity as the Acting Governor issued the internal review decision in an effort to deal with the matter expeditiously.
19. Government House explained the steps it has taken to ensure that the issues that arose in the handling of the PATI requests will not happen again in the future, including by

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<sup>3</sup> This might occur due to the highly sensitive nature of the records, or the need for the head of authority's analysis and decision making on the balance of the public interest. In light of an Information Officer's statutory decision making authority, however, it should be the exception and not the norm, for a head of authority to assume responsibility for issuing the initial decision.

<sup>4</sup> For the review in [Decision 22/2021](#), [Office of the Governor](#).

updating the email address for PATI requests and by getting an additional and future staff to receive formal PATI training.

#### *Applicant's submissions*

20. The Applicant explained that when they asked for an internal review, the Deputy Governor informed them that she was the head of the authority for Government House, in addition to being the Information Officer. The Applicant explained that under those circumstances, they would have directly requested a review by the Information Commissioner in accordance with section 43 and 44 of the PATI Act.
21. The Applicant further explained that the Governor acknowledged receipt of the internal review request. In the acknowledgement letter, the Governor correctly stated that she was the head of authority for Government House and, as such, the Governor would conduct an internal review. The internal review decision dated 22 December 2021, however, was issued by the Deputy Governor while acting as the Governor.

#### *Discussion*

22. Paragraph 1 column 2 of the Schedule to the PATI Act designates the Governor as the head of authority for Government House, for the purposes of the PATI Act. The relevant Gazette Notices confirmed the submissions from Government House that the Deputy Governor was acting as the Governor for the periods of 22-30 October and 17-22 December 2021<sup>5</sup>. The Deputy Governor was therefore correct to inform the Applicant on 30 October 2021 that she was the head of authority for Government House at the time the internal review request was received. The Deputy Governor, in her capacity as the Acting Governor, was further authorised to issue an internal review decision on 22 December 2021.
23. The Information Commissioner appreciates the Applicant's confusion. Nothing in the Deputy Governor's email of 30 October 2021 explained or suggested to the Applicant that the Deputy Governor's claim as the head of authority was because she was the Acting Governor at the time. The Applicant's confusion was exacerbated when they received an acknowledgment of the internal review request from the Governor, who confirmed that she would conduct the internal review, and then later received the

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<sup>5</sup> See Government Notice [GN1373/2021](#) (14 December 2021) and Government Notice [GN1032/2021](#) (20 October 2021), respectively.

internal review decision issued by the Deputy Governor in her capacity as the Acting Governor.

24. The confusion led the Applicant to believe that they could have had the Information Commissioner conduct an independent review under section 44 of the PATI Act. In these circumstances, however, section 44 would not apply for three reasons. First, section 44 applies only for “decisions made by the head of the public authority”. The Deputy Governor was not acting as the Governor at the time the initial decision on the PATI request was not issued by the statutory deadline, 13 October 2021.
25. Second, section 44 only applies to initial decisions actually issued by the head of authority, not to the failure of the head of authority to make a decision.
26. Finally, even if section 44 were to be understood as somehow including referral to the Information Commissioner for a review of the failure of the head of authority to issue a decision, this was not what happened in this review. The Deputy Governor’s failure to issue the initial decision by 13 October 2021 was not the failure of the head of authority to issue a decision.
27. The Applicant submitted that the internal review must be an independent process and, for that reason, the Information Officer should be distant from the internal review process. As the Information Commissioner has explained in [Decision 17/2022, Customs Department](#), paragraph 10, an internal review is the public authority’s opportunity to look at the PATI request anew and make a fresh decision on considering all of the relevant factors. Nothing in the PATI Act prevents the head of authority from relying on an Information Officer, or other officer, to assist them with the internal review<sup>6</sup>. The independent check of a public authority’s handling of PATI requests, including the head of authority’s decisions, falls within the remit of the Information Commissioner.

### *Conclusion*

28. The Information Commissioner is satisfied that Government House’s internal review decision was appropriately issued by its head of authority, in accordance with section 43(1) of the PATI Act. The Information Commissioner also acknowledges Government House’s ongoing commitment to providing PATI training and support to its officers, which benefits both the public authority and the public.

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<sup>6</sup> Information Commissioner’s [Decision 17/2022, Customs Department](#), para. 11.

*Reasonable search – section 12(2)(b) and regulation 5*

29. Section 12(2)(b) of the PATI Act requires public authorities to make every reasonable effort to respond to PATI requests completely and accurately. Regulation 5 of the PATI Regulations 2014 requires the public authority to make reasonable efforts to locate records responsive to the request. A public authority is required to document its efforts if it has been unable to locate the records. Read together, these provisions require public authorities to conduct a reasonable search in response to a PATI request.
30. In reviews where the reasonableness of a public authority's search is in question, the Information Commissioner's task is to assess whether the search was reasonable, in accordance with the provisions of the PATI Act and Regulations. It is not her role to assess whether a public authority should or should not hold a record as a matter of good public administration.
31. In considering the reasonableness of a public authority's search, the Information Commissioner is not concerned with whether a public authority should or should not hold a record as a matter of good public administration. Further, it is not her role to establish the existence or non-existence of a record to a point of certainty<sup>7</sup>.
32. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following<sup>8</sup>:
  - [1] the quality of the public authority's analysis of the PATI request;
  - [2] the scope of the search that it decided to make based on that analysis; and
  - [3] the rigour and efficiency with which the search was then conducted.
33. Finally, the public authority bears the burden to establish, on the balance of probabilities, that the search it conducted to locate records responsive to a PATI request was reasonable.

*Public authority's submissions*

34. Government House acknowledged in its internal review decision that the search it conducted prior to the internal review process was not a 'proper search'.

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<sup>7</sup> See [Decision 08/2021](#), [Police Complaints Authority](#), para. 92.

<sup>8</sup> See, for example, [Decision 11/2020](#), [Department of Education](#), para. 14.



35. Government House explained that it was unable to search the files containing responsive records from 2017 to 2019 at the time of the PATI request, because they were stored in the File Room that was undergoing renovations during the week of 6 December 2021. Government House was able to search the files containing the responsive records from 2020 and 2021 because they were stored in a separate room at the time.
36. During the Information Commissioner's review, Government House searched its electronic and hard copy files to locate all the instruments of appointment, request letters or other final records documenting the appointment of the positions for which the Applicant was interested.
37. Government House explained to the ICO and the Applicant that the instruments were not available for some of the appointments. Referring to section 73(6) of the Constitution, Government House furthered explained to the ICO and the Applicant that the instruments are not required for the appointments of Assistant Justices. In the absence of the instruments for some of the appointments, Government House provided the Applicant with a copy of letters from the Chief Justice requesting the appointments of Assistant Justices (**request letters**).

*Applicant's submissions*

38. The Applicant submitted to the ICO a newspaper article featuring a photograph of a former Governor signing the paper for the appointment of a former Chief Justice in 2012. The Applicant explained that the paper being signed in the photograph represents what they wanted to be able to access at Government House.
39. The Applicant explained that they found that the Gazette Notice published on the Government of Bermuda's website is not a reliable source. The Applicant asserted that based on their observations over the years, not all appointments made by the Government under the instruments of appointment were gazetted.
40. During the Information Commissioner's review, the Applicant refined the scope of the PATI request to look for instruments of appointment of all judges, including Assistant Justices, only. In light of Government House's submission that the Constitution does not require the appointments of Assistant Justices to be made by way of instruments of appointment and that Assistant Justices were appointed through request letters, the Applicant wished to expand their PATI request to include all request letters for the appointments of all judges, including Assistant Justices, from 1 January 2017 to 1 September 2021.

41. The Applicant challenged Government House's view that the Constitution does not require appointments of Assistant Justices to be made by way of instruments of appointment. The Applicant highlighted that Assistant Justices were appointed by way of instruments of appointment between 2019 and 2020, and submitted that the proof of this is in the Official Gazette. The Applicant also referred to a specific instrument of appointment for an Assistant Justice in 2020, which was disclosed by Government House during this review.
42. The Applicant submitted that the Chief Justice has always been required to send a request letter for an Acting appointment of a judge or an assistant justice. According to the Applicant, the request letters did not constitute an appointment but must be followed up and approved by an actual instrument of appointment. To support their arguments, the Applicant provided three gazette notices on the appointment of three Assistant Justices in April 2019. The Applicant also referred to section 73(3), (4) and (6) of the Constitution.
43. The Applicant believes that the instruments of appointment existed for the appointments of Assistant Justices in 2019-2020. The Applicant alleged that Government House is refusing to provide the instruments because they lack consistency and because Government House neglected or omitted to do actual instruments of appointment for some Assistant Justices. The Applicant asked the Information Commissioner to order Government House to produce all instruments for the appointments of Assistant Justices in 2019 and 2020.
44. The Applicant pointed out that, during its handling of the PATI request, Government House did not inform the Applicant of its view that the Constitution does not require the appointments of Assistant Justices to be done by way of instruments of appointment. Instead, Government House disclosed a number of instruments of appointments of Acting Judges and Assistant Justices.

#### *Discussion*

45. The Information Commissioner considers the reasonableness of Government House's search to locate records responsive to the PATI.

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

46. The PATI request sought access to 'instruments under the Public Seal' referred to in various provisions of the Constitution, which are also known as instruments of appointment. The Applicant originally asked for the instruments for the appointments of a number of posts, such as the members of the Senate, Premier and other Ministers,

Chief Justice, Puisne Judges, Assistant Justices, Acting Chief Justices and Acting Puisne Judges, as well as Court of Appeal Judges. The PATI request sought for responsive records from 1 January 2017 to 1 September 2021.

47. During Government House's handling of the PATI request, it did not appear that there was any discrepancy between Government House's understanding of the PATI request and what the Applicant was seeking. The Applicant was not satisfied with the disclosures made at the internal review stage because they were noticeably incomplete, but Government House acknowledged the incompleteness of its initial disclosures.
48. The discrepancy between Government House's understanding of the PATI request and what the Applicant was looking for became apparent only during the Information Commissioner's review. This review clarified that the instruments of appointment did not exist for some of the appointments made by the Governor. Government House explained that the instruments did not exist for those appointments because the Constitution does not actually require the appointments of those posts to be made by way of instruments of appointments. Government House then took the view that, for appointments in which the instruments were not required and thus did not exist, the request letters would be the records that are responsive to the PATI request.
49. The Applicant, in contrast, did not view the request letters as responsive to the PATI request. This can be concluded from the Applicant's wish during this review to 'expand' the scope of the PATI request to include the request letters for the appointments of all the judges within the relevant time period.
50. Given the differing views of the parties on the responsiveness of the request letters to the PATI request, the Information Commissioner considers what would be an adequate understanding of the PATI request for Government House to have adopted.
51. The Applicant's PATI request sought instruments of appointment because this manner of appointment had been observed by the Applicant in photographs of the appointment process and is consistent with the Applicant's reading of the requirements of the Bermuda Constitutional Order. Government House, in contrast, had knowledge that not all of the appointments which the Applicant referenced were made by instruments of appointment and, in fact, that some were made based only on request letters marked approved by the Governor.
52. Under these circumstances, it was appropriate for Government House to read the PATI request broadly, to include both 'instruments of appointment', as well as their equivalent final record when no such instrument existed, e.g., the request letters. Government

House's understanding of the PATI request was based on the knowledge that it had of the Governor's appointment process that was not known to the Applicant.

53. Given the above, Government House's analysis of the PATI request was adequate.
54. The Information Commissioner clarifies that this does not mean that the Applicant's wish to 'expand' the scope of the PATI request is accepted to include the request letters for the appointments of all judges, including those for which Government House holds the instruments of appointment. The PATI Act only requires a public authority to respond to the records that are requested in the PATI request. The request letters fall within the PATI request when the approved request letters are the final record of appointment, e.g., no instrument of appointment exists. Should the Applicant seek the request letters related specifically to the disclosed instruments of appointment, they would need to file a new PATI request.

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

55. During its handling of the PATI request, Government House was unable to search some of its physical file locations because they were stored in the File Room that was inaccessible due to ongoing renovations. Based on this, and as Government House acknowledged, the scope of its search during the initial handling of the PATI request was not adequate.
56. Government House, however, addressed the gap during this review. It conducted an additional search of its electronic and hard copy files in an effort to locate all of the relevant instruments of appointment, request letters or other final records documenting the appointments of all judges between 1 January 2017 and 1 September 2021.
57. The Information Commissioner is satisfied that the scope of Government House's search during this review was adequate.

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

58. Because the scope of the initial search were inadequate, the Information Commissioner need not consider the rigour and efficiency with which the initial search was conducted.
59. The Information Commissioner is satisfied that the additional search conducted by Government House during this review was conducted with adequate rigor and efficiency. In addition to being conducted by individuals who were familiar with Government House's filing systems and appointment practices, and who had access to all of the relevant files, the search was conducted on more than one occasion. The additional

searches resulted in the identification of additional records responsive to the PATI request, which Government House had disclosed to the Applicant.

### *Conclusion*

60. The Information Commissioner is not satisfied that when Government House initially responded to the PATI request, it conducted a reasonable search to locate records responsive to the PATI request, in accordance with section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations.
61. In light of the additional searches conducted during this review, however, the Information Commissioner is satisfied that Government House has now met the reasonable search requirements in section 12(2)(b) of the PATI Act and regulations 5 of the PATI Regulations.
62. The Information Commission acknowledges the Applicant's arguments on why they disagree with Government House's position that the Constitution does not require the appointments of certain posts to be made by way of instruments of appointments. As explained above, in assessing the reasonableness of a public authority's search, it is not within the Information Commissioner's remit to determine whether the public authority should have held the requested records, for one reason or another. Whether the Constitution requires certain appointments to be made by the Governor under an instrument of appointment, the fact remains that Government House conducted additional searches during this review and brought itself into compliance with the search requirements of the PATI Act.

### *Manner of access to records – section 17(2)*

63. Section 17(1) of the PATI Act provides a list of examples of forms or manners of access to records responsive to a PATI request, including "a reasonable opportunity to inspect the record" and the provision of "a copy of the record".
64. In the absence of the definition of 'inspect' in the PATI Act or Interpretation Act 1951, the word should be read in its ordinary meaning, i.e., to "look at (someone or something) closely, typically to assess their condition or examine any shortcomings [or] examine (someone or something) to ensure that they reach an official standard"<sup>9</sup> Given the

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<sup>9</sup> Oxford Dictionary of English (3<sup>rd</sup> ed. 2010).

ordinary meaning, the Information Commissioner understands that “to inspect the record” in section 17(1)(a) means to be given a reasonable opportunity to examine the original record responsive to the PATI request, rather than to receive a copy of it<sup>10</sup>.

65. Section 17(2) of the PATI Act allows requesters to specify the preferred form or manner of access to the records being sought. Public authorities are required to provide the records in the requested manner or form, unless they are satisfied that doing so would be significantly more inefficient or if it would lead to harms specified in subsection 2(b)(i) to (iv). Relevant to this review is the harm in subsection 2(b)(iv), i.e., the granting of access in the form or manner requested would “affect the protection of an exempt record from disclosure”.
66. If public authorities are satisfied that the granting of access in the requested manner would affect the protection of an exempt record from disclosure, the public authority is permitted under the PATI Act to give access to the records in another manner that it considers appropriate, in accordance with section 17(3).
67. The standard of likelihood required in section 17(2) is ‘would’, which means that there is a high probability that the anticipated harm will occur. ‘Would’ has also been described as a significant and weighty chance of the harm occurring<sup>11</sup>.
68. In sum, to appropriately rely on section 17(2)(b)(iv) and (3), public authorities must consider the following:

[1] What is the relevant exempt record whose protection from disclosure would be affected by the granting of access in the requested manner?

[2] How would the granting of access in the requested manner affect the protection of the exempt record from disclosure?

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<sup>10</sup> Other jurisdictions have applied the same understanding of what it means to ‘inspect’ a record. See, e.g., UK Information Commissioner’s [Decision Notice FS50299777](#) (Shotteswell Parish Council) (finding that as the Parish Council did not have its own premises and had a difficult relationship with the requester, it was reasonable for the Parish Council to provide access to the records by means other than on premise physical inspection). The First-tier Tribunal upheld Decision Notice FS0299777 in [Mr Bruce Teuten v the Information Commissioner and Shotteswell Parish Council](#) (EA/2010/0159, 5 January 2011); see also the [UK Information Commissioner’s Guidance: Means of communicating information \(section 11\)](#).

Section 17(1)(d) of the Ireland Freedom of Information Act 2014 also provides a request with the option to request as a manner of access “a reasonable opportunity to inspect the record”.

<sup>11</sup> Information Commissioner’s [Decision 12/2018, Ministry of Finance Headquarters](#), para. 71.

[3] Would this be likely to occur?

69. The public authority bears the burden to establish that, on the balance of probabilities, it was justified to give access to the responsive records in a different manner than the Applicant requested.

*Public authority's submissions*

70. Government House explained that access to inspect the instruments of appointments could not be granted because they were contained in multiple physical files covering a time period of multiple years. The physical files also included other information, including personal information, not relevant to the PATI request.
71. Government House accepted that it should have explicitly informed the Applicant that the instruments of appointment were not available in the manner requested and that access could be provided in a different manner.

*Applicant's submissions*

72. The Applicant reiterated that their PATI request asked that they be given a reasonable opportunity to inspect the responsive records, which was a different manner of access than Government House provided. The Applicant highlighted that Government House did not provide any reason as to why they were not allowed to inspect the actual records and take notes.
73. The Applicant queried the locations of the instruments of appointment and how the records were stored. The Applicant submitted that the instruments of appointment themselves do not appear to have any personal information which would make them exempt.

*Discussion*

74. The Information Commissioner considers Government House's decision to provide the Applicant with copies of the responsive records rather than the Applicant's preferred manner to personally inspect the records.

[1] What is the relevant exempt record whose protection from disclosure would be affected by the granting of access in the requested manner?

75. The Information Commissioner accepts Government House's submissions that the relevant exempt records are other records non-responsive to the PATI request, which are stored in the same physical files as the instruments of appointment and the approved request letters. Because those other records relate to a number of aspects of the

recruitment, selection and appointment of individuals for various positions, the Information Commissioner is satisfied that the files contain personal information that is exempt under section 23(1).

[2] How would the granting of access in the requested manner affect the protection of the exempt record from disclosure?

[3] Would this be likely to occur?

76. The Information Commissioner also accepts Government House's submission that the instruments of appointment were stored in the same files as the exempt personal information records. Based on this submission, it can be concluded that Government House did not have a separate register which lists every appointment made by the Governor or a specific file containing instruments of appointment only.
77. Given the manner in which Government House stored the instruments of appointment and approved request letters, the Information Commissioner is satisfied that providing the Applicant with the opportunity to inspect the files as the records are currently stored would inadvertently disclose the other exempt records of personal information contained in the files.

#### *Conclusion*

78. In accordance with section 17(2)(iv) and (3), Government House was justified in providing access to the instruments of appointment and approved request letters in a manner of access that is different than what was requested by the Applicant.

#### *Conclusion*

79. The Information Commissioner is satisfied that the head of authority for Government House issued the internal review decision, in accordance with section 43(1) of the PATI Act.
80. The Information Commissioner is not satisfied that Government House conducted a reasonable search for responsive records, as required by section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations. During this review, Government House conducted additional searches to meet these requirements.
81. Finally, the Information Commissioner is satisfied that, in accordance with section 17(2)(iv) and (3) of the PATI Act, Government House was justified in providing the Applicant with access to the responsive records in a different manner than the Applicant requested.



## Decision

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The Information Commissioner finds that the Office of the Governor (**Government House**) properly issued an internal review decision by the head of authority, in accordance with section 43(1) of the Public Access to Information (**PATI**) Act 2010. The Information Commissioner further finds that Government House did not initially conduct a reasonable search, as required by section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations, but met these requirements through additional searches conducted during this review. Finally, the Information Commissioner finds that Government House was justified under section 17(2)(iv) and (3) in providing the Applicant with access to the disclosed records in a manner different than what the Applicant had requested.

In accordance with section 48 of the PATI Act, the Information Commissioner affirms the internal review decision issued by Government House and does not require it to take further steps, because it has now met the requirements of the PATI Act with respect to this review.

## Judicial Review

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The Applicant, the Office of the Governor, 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  
17 November 2022

## Appendix 1: Relevant statutory provisions

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### Public Access to Information Act 2010

#### Access to records

12 (1) ...

(2) Public authorities shall make every reasonable effort to—

(a) ...

(b) respond to requests completely, accurately and in a timely manner.

...

#### Manner of access to records

17 (1) A public authority shall give access to a record under this Act by providing the requester with the information in the record in any of the following forms or manners that it considers appropriate—

(a) a reasonable opportunity to inspect the record;

(b) a copy of the record;

...

(2) Where a public authority decides to grant a request and the request is for access to a record in a particular form or manner, access shall be given in that form or manner unless the authority is satisfied that—

(a) ...

(b) the giving of access in the form or manner requested would—

...

(iv) affect the protection of an exempt record from disclosure.

(3) Where a public authority decides to grant a request but, for reasons set out in subsection (2), does not give access to the record requested in the form or manner specified in the request, the authority shall give access in such form or manner as the authority considers appropriate.

### **Conduct of review**

- 43 (1) An internal review of a decision by a public authority, other than a decision made by the head of a public authority, shall be conducted by the head of the public authority concerned.

...

## **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.

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