

Decision Notice

Decision 30/2022: Bermuda Gaming Commission

Records of communications with the National Anti-Money Laundering Committee

Reference no: 20190122-01

Decision date: 21 December 2022

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Gaming Commission (**Commission**) for various records related to the Commission's communications with the National Anti-Money Laundering Committee (**NAMLC**). The Commission refused the request under the exemption in section 31(1) of the PATI Act relating to the financial interest of Bermuda and the Government's ability to manage the national economy.

During this review, the Commission invoked additional exemptions, including those in section 27(1) (Cabinet documents) and section 37(1) (disclosure prohibited by other legislation). The Information Commissioner also notified a third party, which invoked the exemptions in section 25(1)(b)(commercial value) and (c)(adverse effect on commercial interests) to deny access to part of a specific record.

The Information Commissioner has found that the PATI Act does not apply to a number of records or parts of records by virtue of section 4(1)(b)(v) and (vi) because they were obtained or created by the Department of Public Prosecution and the Attorney General's Chambers respectively, while carrying out their constitutional and statutory functions. She has further found that the Commission was justified in relying on section 37(1) and justified, in part, on relying on section 31(1) to deny access to certain records. Finally, the Information Commissioner has found that parts of the remaining records are exempt under section 23(1) (personal information).

The Information Commissioner has varied, in part, the Commission's internal review decision to deny access to parts of the request by virtue of section 4(1)(b)(v) and (vi), and to deny some records under the exemptions in sections 23(1) and 37(1). The Information Commissioner also affirms, in part, the Commission's decision to deny access to other records under section 31(1). Finally, the Information Commissioner has reversed, in part, the Commission's decision to deny access to the remaining records and parts of records and has ordered the Commission to disclose these records in whole or in part.

Relevant statutory provisions

Public Access to Information Act 2010: section 4 (application); section 21 (public interest test); section 23(1) (personal information); section 24 (definition of personal information); section 31 (Bermuda's financial interests and management of national economy); section 37(1) (disclosure prohibited by other legislation).

Bermuda Monetary Act 1969: section 31 (secrecy)

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

Background

1. On 31 January 2018, the Applicant sent a Public Access to Information (**PATI**) request to the Bermuda Gaming Commission (**Commission**), known at the time as the Bermuda Casino Gaming Commission, asking them to provide:

All communications between [the Commission] and the National Anti-Money Laundering Committee (**NAMLC**), including any reports or documents produced by the Commission for and at the request of NAMLC. This would include the National Risk Assessment Tracking Document, showing the date it was submitted to NAMLC¹.

2. The Commission's initial decision of 8 March 2018 refused access to the records requested under the exemption in section 31(1) of the PATI Act, involving Bermuda's financial interests and the Government's ability to manage the national economy.
3. The Applicant made a timely request for an internal review on 13 March 2018.
4. On 22 January 2019, the Commission issued an internal review decision upholding its initial decision denying public access under section 31(1) of the PATI Act².
5. On the same day, the Applicant made a timely application for an independent review by the Information Commissioner of the Commission's internal review decision.

Investigation

6. 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.

¹ For background on NAMLC and Bermuda's mutual evaluation process by the Caribbean Financial Action Task Force, see [Decision 35/2019](#), [Ministry of Finance Headquarters](#), paras. 1-12.

² Issued in response to the Information Commissioner's [Decision 04/2019](#), [Bermuda Casino Gaming Commission](#).

7. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Commission to determine whether its reliance on the exemptions was justified.
8. On 29 January 2019, the Information Commissioner's Office (ICO) notified the Commission of the valid review application and requested that the Commission submit a copy of the records responsive to the PATI request.
9. The Commission provided the ICO with a set of records on two separate occasions, on 19 February 2019 and 12 July 2019 and the ICO retrieved some of the email attachments from the links in the PDF of the emails. During this review, the Commission confirmed that it abandons its reliance on any of the exemptions to withhold record 76. The Information Commissioner only considers the personal information exemption in this record. After duplicates and non-responsive records are removed, a total of 130 records are considered in this review: 1, 3, 4, 4a-4c, 5-13, 13a, 15-19, 19a-19c, 20, 20a, 20b, 21, 21a, 22, 22a, 23, 24, 27-30, 33-35, 35a-35c, 36, 36a, 37, 37a, 39, 39a, 42, 43, 48, 50, 50a, 50b, 51, 51a, 52, 53, 53a, 55, 55a, 57, 58, 58a, 61, 63, 63a, 64, 64a, 66, 67a, 68, 71-73, 73a, 74, 74a-74d, 75, 76, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 128a, 134, 136-138, 140, 142-152 and 154.
10. During this lengthy review, the Commission revised its position to invoke the following additional exemptions to justify its refusal of the PATI request: sections 28(1) (Ministerial responsibility), 29(1) (deliberations of public authorities) and 37(1) (disclosure prohibited by other legislation). Although the Commission did not specify the exemptions, it also invoked section 27(1) to withhold certain records which, as explained below, are found to fall outside the scope of the PATI Act.
11. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority, the applicant and any third party concerned a reasonable opportunity to make representations. Both the Commission and the Applicant were invited to comment on the Commission's reliance on the exemptions, as well as the potential application of section 4(1)(b)(v) and (vi), for the Information Commissioner's consideration. Two third parties were identified and also invited to make submissions.
12. The Commission did not provide a response to the formal invitation to make submissions. However, the Information Commissioner considered information provided by the Commission during this review and related reviews, which supports the Commission's position. The Applicant confirmed that they do not intend to make submissions. Only one third party responded to the invitation to make submissions and asserted the exemptions in section 25(1)(b) (commercial value) and (c) (commercial interests) to

object to the disclosure of part of record 13 for the Information Commissioner's consideration.

Information Commissioner's analysis and findings

13. In coming to this Decision, the Information Commissioner considered all of the relevant information in the ICO's communications with the parties and publicly available information. She is satisfied that no matter of relevance has been overlooked.
14. The Information Commissioner strives to provide as full a public explanation of her reasoning and Decision as possible. Section 53(2) of the PATI Act, however, prevents discussion of the withheld records. As a result, the analysis below cannot be as detailed as would otherwise be preferred.

Preliminary issue – responsiveness of records

15. In a letter dated 12 July 2019, the Commission submitted that records 6, 35a, 37a, 51a, 63, 64a and 74a-d are not responsive to the PATI request because they are related to Bermuda's mutual evaluation by the Caribbean Financial Action Task Force (**CFATF**) and the preparation by NAMLC for that process. The Commission further submitted that the Applicant is "interested in understanding and obtaining evidence showing the role played" by the Commission in the 2017 Money Laundering National Risk Assessment only.
16. The PATI request asked for "all communications" between the Commission and NAMLC, up until 31 January 2018. While the request made a reference to the National Risk Assessment Tracking Document, such reference was preceded by the phrase 'this would include'. As such, by referring to the National Risk Assessment Tracking Document, the Applicant was only informing the Commission of an example of a record which would fall within the scope of the PATI request and one which the Applicant would be interested in obtaining.
17. The Commission did not explain why it was of the view that the scope of the PATI request is limited to the Money Laundering National Risk Assessment only, despite being given a reasonable opportunity to do so. Contrary to what it submitted to the ICO during the review, the Commission's internal review decision described that the request was for "access to all the Commission's communications with NAMLC". Further, at least one of the withheld records provided to the ICO which the Commission initially identified as responsive to the request was related only to the mutual evaluation by the CFATF.

18. Considering the above, the Information Commissioner does not accept the Commission's position that records 6, 35a, 37a, 51a, 63, and 64 and 74a-d are not responsive to the PATI request. Consequently, these records are considered in this review.

Applicability of the PATI Act – section 4(1)(b)(v) and (vi)

19. As Justice Subair Williams explained in [Attorney General v Information Commissioner](#), para. 24, the “scope of the application of the PATI Act may be determined by section 4 which lists the classes of material to which the legislation does not apply”. In accordance with section 4(1)(b), the PATI Act does not apply to records obtained or created by specified public authorities in the course of carrying out their functions. The Department of Public Prosecutions (**DPP**) and the Attorney-General's Chambers (**AG's Chambers**) are two of those public authorities, as set out in subsection 4(1)(b)(v) and (vi), respectively.
20. Although the PATI Act does not define the ‘functions’ of a public authority, section 7 of the Interpretation Act 1951 (**Interpretation Act**) defines ‘functions’ as “powers conferred, or duties imposed, on the authority or officer by or under any provision of law”.
21. Records that relate to the general administration of these specified public authorities, however, continue to fall within the scope of the PATI Act by virtue of section 4(2). In [Attorney General v Information Commissioner](#), para. 37, Justice Subair Williams adopted the definition of ‘general administration’ set out by the Irish Information Commissioner, i.e., records relating to personnel, pay matters, recruitment, accounts, information technology, accommodation, internal organisation, office procedures and the like. Justice Subair Williams further agreed that records related to matters concerning the core business of the relevant public authority are not records relating to its general administration³.
22. In sum, for a record to be removed from the scope of the PATI Act by virtue of section 4(1)(b), the following must be considered:

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

³ See [Attorney General v Information Commissioner](#), at para. 40. In [Decision 02/2019](#), [Office of the Governor](#), para. 20, the Information Commissioner adopted this definition of ‘general administration’ as applied by the Irish Information Commissioner. See also [Decision 09/2021](#), [Human Rights Commission](#), para. 17; [Decision 05/2020](#), [Human Rights Commission](#), at para. 15; and [Decision 19/2019](#), [Internal Audit Department](#), at para. 19.

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

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

Public authority's submissions

23. The Commission did not make submissions on the applicability of section 4(1)(b)(v) or (vi) to some of the responsive records.

Applicant's submissions

24. The Applicant did not make submissions on the applicability of section 4(1)(b)(v) or (vi) to some of the responsive records.

Discussion

25. The Information Commissioner considers the applicability of section 4(1)(b)(v) and (vi) to records 5, 6, 8-11, 15, 16, 19, 19a-19c, 23, 24, 29, 30, 33, 34, 35a-35c, 37, 37a, 50, 50a, 50b, 51, 51a, 52, 53, 53a, 55a, 64, 64a, 67a, 74 and 74a-74d, as well as parts of records 17, 57, 75, 116, 143, 144 and 154.

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

26. As noted above, paragraph 19, the DPP and AG's Chambers are listed in section 4(1)(b)(v) and (vi), respectively. Save for records 35a and 67a, the records identified in paragraph 25 consist of emails and their attachments which were sent to the DPP or the AG's Chambers, or both. Most of the emails provided the DPP and AG's Chambers with NAMLC's weekly update to the Cabinet. Having carefully reviewed records 35a and 67a and the relevant circumstances, the Information Commissioner is satisfied that they were obtained by the DPP and/or AG's Chambers. Consequently, all of the records and parts of records identified in paragraph 25 were obtained by the DPP or AG's Chambers, or both.

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

27. NAMLC was established under section 49(1) of the [Proceeds of Crimes Act 1997 \(POCA\)](#) for the purpose of, among others:

- a. advising the relevant Ministers on various matters relating to money laundering, terrorist financing and the financing of proliferation, including the detection and prevention of these crimes, the development of policies and a national plan of action to combat money laundering and terrorist financing and Bermuda's participation in the international effort against money laundering and terrorist financing; and
 - b. coordinating activities to identify, assess and understand Bermuda's money laundering and terrorist financing risks and taking steps to ensure that such assessments are up-to-date.
28. Section 49(2) of [POCA](#) lists the members of NAMLC, which includes the Solicitor General and the Director of Public Prosecutions. The Solicitor General and the Director of Public Prosecutions are parts of AG's Chambers and the DPP, respectively.
29. More broadly, under sections 70(2)-(6) and 71a of the [Bermuda Constitutional Order 1968 \(Constitution\)](#), the DPP has the power to prosecute criminal offences, which includes those in relation to money laundering and terrorist financing. As the NAMLC Risk Assessment explains, the DPP is also responsible for confiscation and conviction-based forfeiture of assets⁴. Similarly, section 71(1) of the [Constitution](#) establishes the Attorney-General as the legal advisor to the Government, and the AG's Chambers work on behalf of the Attorney General. As part of its duty as the legal advisor to the Government, AG's Chambers is responsible for mutual legal assistance in responding to foreign requests for formal assistance in criminal matters. AG's Chambers also deals with requests, on behalf of the DPP, to other countries to assist Bermuda in money laundering and terrorist financing criminal matters. On behalf of the Attorney General and the Minister of Legal Affairs, AG's Chambers plays a key role in relation to civil recovery of assets deemed to be the proceeds of criminal conduct⁵.
30. Given the purpose of NAMLC, as well as the roles of the DPP and AG's Chambers in anti-money laundering and counter-terrorism financing (**AML/CTF**), also known as anti-money laundering and anti-terrorist financing (**AML/ATF**) efforts, the Information Commissioner is satisfied that the identified records or parts of records listed in paragraph 25 were obtained by the DPP and AG's Chambers in the course of carrying out their constitutional and statutory functions.

⁴ NAMLC, [The Assessment of Bermuda's National Money Laundering and Terrorist Financing Risk \[NAMLC Risk Assessment\]](#) (2017), at page 17.

⁵ [NAMLC Risk Assessment](#) at page 14.

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

31. The DPP and AG's Chambers functions in relation to anti-money laundering and anti-terrorism financing efforts, including their work with NAMLC, relate to each authority's functions, rather than its general administration.

Conclusion

32. The Information Commissioner is satisfied that the PATI Act does not apply to records 5, 6, 8-11, 15, 16, 19, 19a-19c, 23, 24, 29, 30, 33, 34, 35a-35c, 37, 37a, 50, 50a, 50b, 51, 51a, 52, 53, 53a, 55a, 64, 64a, 67a, 74 and 74a-74d, part 1 of records 17, 57, 75, 116, 144 and 154 and parts 1-4 of record 143 by virtue of section 4(1)(b)(v) and (vi) because they were obtained by the DPP or AG's Chambers, respectively, in the course of carrying out their functions and are not related to these authorities' general administration.
33. The Information Commissioner does not consider the Commission's reliance on the exemptions in Part 4 of the PATI Act for the records listed above.

Disclosure prohibited by other legislation – section 37(1)

34. 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.
35. 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.
36. The exemption in section 37(1) is not subject to the public interest test.
37. In sum, to rely on section 37(1), public authorities must consider the following⁶:

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

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

⁶ See, for example, [Decision 27/2019, Bermuda Health Council](#), para. 38 and more recently [Decision 18/2022, Ministry of Health Headquarters](#), para. 167.

[3] Does the record fall within any exception or gateway to public disclosure that is contained in the statutory provision?

38. 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

39. The Commission submitted that disclosure of records or parts of records 3, 4, 4a-c, 12, 13, 13a, 66, 97 and 148 are prohibited by section 31(1) of the [Bermuda Monetary Act 1969 \(BMA Act\)](#).

Applicant's submissions

40. The Applicant did not make submissions.

Discussion

41. The Information Commissioner considers the Commission's reliance on section 37(1) to withheld records or parts of records 3, 4, 4a-c, 12, 13, 13a, 66, 97 and 148.

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

42. Section 31(1) of the [BMA Act](#) creates a mandatory prohibition on disclosure, as the Information Commissioner has consistently found in her previous decisions⁷.

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

43. Section 31(1) of the [BMA Act](#) reads:

Except in so far as may be necessary for the due performance of his functions under the [BMA] Act or other statutory provision ... any person who is, or is acting as, an officer, a servant, an agent or an adviser of the [BMA] shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Government or the Authority or of any person that may come to his knowledge in the course of his duties.

44. 'All matters' in section 31(1) of the [BMA Act](#) should be read in its plain meaning, i.e., the whole quantity or extent of a particular subject or situation under consideration⁸. The

⁷ See, for example, [Decision 12/2019, Bermuda Monetary Authority](#), para. 28.

⁸ Oxford Dictionary of English (3rd ed. 2010).

broad scope of 'all matters', however, is limited by the remainder of section 31(1), which requires the matters to both (a) relate to the affairs of the Government, the BMA or any person and (b) come into the knowledge of an officer, servant, agent or adviser of the BMA in the course of carrying out their duties.

45. After carefully reviewing the withheld records and parts of records listed in paragraph 41, the Information Commissioner agrees that they relate to the affairs of the Government, e.g., NAMLC, and the BMA. The records and parts of records also came into the knowledge of the BMA while carrying out its duties. The BMA's membership with NAMLC was due to the BMA's statutory supervisory authority for the financial sector as well as its statutory responsibilities in relation to vetting and retaining information on beneficial ownership of legal persons.⁹
46. As a result, the records and parts of records listed in paragraph 41 fall within the scope of the section 31(1) of the [BMA Act](#).

[3] Does the record fall within any exception or gateway to public disclosure that is contained in the statutory provisions?

47. The disclosure of records falling within the secrecy provision of section 31(1) is allowed under the limited circumstances set out in section 31(1AA)-(1BA). The disclosure referred to under those subsections, however, largely speak to disclosures to limited individuals or entities, i.e., disclosure to certain parties or for specific purpose only. This is in contrast to a disclosure to the general public, as under the PATI Act. Under subsection 1(c), a record falling within the secrecy provision can be publicly disclosed if the information is or has been available to the public from other sources. After reviewing the contents of the records and information available in the public domain, the Information Commissioner is satisfied that the records or parts of the records listed in paragraph 41 are not nor have been available to the public from sources other than the BMA. The gateway to disclosure in section 31(1)(c), as well as the remaining gateways, are not applicable.

Conclusion

48. The Information Commissioner is satisfied that the Commission was justified in finding that the exemption under section 37(1) applies to records or parts of records 3, 4, 4a-4c,

⁹ See section 20A of the [BMA Act](#) and section 98L of the [Companies Act 1981](#).

12, 13, 13a, 66, 97 and 148. In light of this conclusion, the third party's assertion of section 25(1)(b) and (c) to object to the disclosure of part of record 13 is not considered.

Financial and economic interest – section 31(1)

49. A public authority may rely on section 31(1) to deny access to a public record whose disclosure could reasonably be expected to have a serious, adverse effect on the financial interests of Bermuda or on the Government's ability to manage the national economy¹⁰.
50. Section 18(1)(d) of the Ontario [Freedom of Information and Protection of Privacy Act](#) is the equivalent of section 31(1) of the PATI Act and the understanding of section 18(1)(d) is informative. The Ontario Information and Privacy Commissioner has explained that the exemption "is intended to protect the broader economic interests of Ontarians, and those interests can be affected by the reduction of revenue streams that the Province uses to partly or wholly fund programs"¹¹. In the UK, the 'financial interest' part of the exemption equivalent to section 31(1) of the PATI Act protects "information that would, or would be likely to prejudice the financial interests of government administration, for example revenue raised through taxation, or the funding of these administrations"¹².
51. The exemption in section 31 thus safeguards the Government's broader financial and economic interests, at the country level or the economy as a whole, which could be damaged by releasing too much information or at an untimely point, e.g., prematurely. The exemption recognises that "[i]nformation about some types of proposals, or even the admission that certain possibilities are being considered, can lead to speculation, disturbance of the markets and even improper gain"¹³.
52. To rely on section 31(1), the public authority must identify a specific financial interest impacting Bermuda or a specific aspect of the Government's ability to manage the national economy. The PATI Act and Interpretation Act do not define 'financial interest' or 'economy'. In its plain meaning, 'finance' means "the management of a large amount

¹⁰ A similar provision can be found in section 40(1)(a) of the [Ireland Freedom of Information Act 2014](#) as well as section 18(1)(d) of the [Ontario Freedom of Information and Protection of Privacy Act](#).

¹¹ Information and Privacy Commissioner, Ontario Canada, [Order PO-4236](#), para. 88.

¹² See UK [ICO Guidance: The economy \(section 29\)](#) (2020), at Overview.

¹³ Philip Coppel, [Information Rights Law and Practice](#) (4th ed.), at page 673.

of money, especially by government”¹⁴, which is consistent with the understanding of ‘finance’ in other jurisdictions.

53. Bermuda’s financial interests can therefore be understood as the country’s interest in financial dealings and monetary policies. This would include, but not be limited to, information related to “interest rates and the framework for monetary policy and government borrowing forecasts”, “government case dealing and banking arrangements”, government “reserves and foreign currency liabilities management and foreign exchange dealings” and “intended investment strategies”.¹⁵ It is important to note that “financial interest” in section 31(1) is a different from “commercial interest” referred to in section 25(1)(c) of the PATI Act.¹⁶
54. The Government’s management of the national economic refers to its ability to control the economy as a whole, which involves the production and consumption of goods and services as well as the supply of money. This may include the Government’s capacity to lead on new areas of economic activity being developed.
55. In [Order P-1398](#), the Ontario Information and Privacy Commissioner explained (emphasis added):

In my view, the inclusion of this reference to the government’s ability to manage the economy has important implications relating to the purpose of this exemption. No democratic government has full control of the economy it supervises, but one can expect that such a government will “manage” the economy using the tools normally available (i.e. legislation, tax measures, grants, agreements, etc.). In considering scenarios which might “be injurious to” the government’s ability to “manage the economy”, I have concluded that many of these would likely be related to

¹⁴ Oxford Dictionary of English (3rd ed. 2010).

¹⁵ See the [UK ICO Guidance: The economy \(section 29\)](#), at para. 21. Similarly, the [Ontario Government’s Freedom of Information and Protection of Privacy Manual](#), chapter 5, defines ‘financial’ as “specific data and information that relates to finance or money matters, including the use and distribution of money. Examples include accounting methods, financial statements, pricing practices, bid information, property tax information, sales revenues, and employment costs”.

¹⁶ See [Decision 24/2019, Bermuda Hospitals Board](#), para. 148 in which the Information Commissioner distinguishes financial interests from commercial ones. The difference in the two concepts is also accepted by the UK Information Tribunal in [University of Central Lancashire v IC and Professor Colquhoun EA/2009/0034](#) (8 December 2009).

some kind of serious threat to Ontario's economic security. It follows, therefore, that **the inclusion of the reference to the government's ability to "manage the economy" means that this exemption is, among other things, aimed at avoiding or minimizing serious threats to Ontario's economic security.**"¹⁷

56. Reference to 'Bermuda' and 'national economy' means that for section 31(1) to apply, the identified harm will usually go beyond the ability of individual public authorities to manage their financial resources. As the relevant financial interest or economy activity becomes narrower, public authorities will need to show stronger evidence that the national economy or Bermuda's financial interests as a whole will be harmed by disclosure of the requested records.
57. Relying on section 31(1) further means that a public authority must identify the potential 'serious, adverse effect' to the identified financial interest or the specific aspect of the Government's ability to manage the economy that might arise from disclosure. Having 'a serious, adverse effect' is not defined in the PATI Act. By its ordinary definition, it means bringing about an unfavourable or harmful result whose damage is severe. This is a stronger showing of harm than the usual standard of 'prejudice'. In Ireland, the financial markets' negative view of the country's capacity to repay borrowing has been found to amount as a serious adverse effect on Ireland's financial interests or on the ability of its Government to manage the national economy¹⁸. The Irish Information Commissioner has also found that the refusals from pharmaceutical companies to enter into negotiations with the Health Service Executive (publicly funded healthcare system in Ireland) amounts to a serious adverse effect on Ireland's financial interests¹⁹.
58. In examining the merits of a public authority's view that the harm could reasonably be expected, the Information Commissioner does not have to be satisfied that such an outcome will definitely occur. The test is not concerned with the question of probabilities or possibilities, but rather whether or not the public authority's expectation is

¹⁷ Information and Privacy Commissioner, Ontario, Canada, [Order P-1398](#). The Order was challenged by way of judicial review, but the Ministry's application for leave to appeal to the Supreme Court of Canada was dismissed on 20 January 2000.

¹⁸ Irish Information Commissioner, [The Irish Times & the Department of Finance](#), 100173 (29 June 2012).

¹⁹ Irish Information Commissioner in [Mr K & Health Service Executive Primary Care Reimbursement Service](#), OIC-53233-L4Z0D3 (180315) (28 August 2019).

reasonable. The likelihood of harm must be that a reasonable person may expect the anticipated harm to occur considering all circumstances of the case. It is sufficient for the public authority to show that it expects an outcome and that its expectations are justifiable in the sense that there are adequate grounds for the expectations²⁰.

59. Showing that the requested records discuss certain matters of the economy is insufficient. The public authority must demonstrate, based on what is actually revealed by the content of the records, why it expects the specified outcome to occur and on what basis its expectation is reasonable.
60. The requirement to demonstrate the potential harm is required to ensure that a public authority is justified in denying the public access to records which might otherwise further accountability for decision making. Decision making that affects the financial interests of Bermuda or the Government's ability to manage the economy may have a broad impact upon the lives and welfare of Bermudians and residents. The PATI Act carefully balances the purposes in section 2 of the PATI Act to empower Bermudians and residents to be more informed about such decision making, with the need for public authorities to maintain the confidentiality of certain records. This balance is maintained, in part, by ensuring that a public authority's reliance on an exemption is grounded in a well-reasoned and supported argument.
61. If section 31(1) is properly engaged, a public authority must then consider the public interest test. If the public interest would, on balance, be better served by disclosure than non-disclosure, then the records must still be disclosed.
62. In sum, when applying the exemption in section 31(1), a public authority must ask:
 - [1] What is the relevant financial interest of Bermuda or aspect of the Government's ability to manage the national economy?
 - [2] What is the relevant serious adverse effect to the financial interest of Bermuda or aspect of the Government's ability to manage the national economy?
 - [3] How can disclosure cause the identified serious, adverse effect to Bermuda's financial interest or the Government's ability to manage the national economy?

²⁰ See Irish Information Commissioner in [Mr K & Health Service Executive Primary Care Reimbursement Service](#), OIC-53233-L4Z0D3 (180315) (28 August 2019).

[4] Could the serious, adverse effect reasonably be expected to occur?

[5] If the exemption is engaged, does the balance of the public interest require disclosure?

63. Finally, a public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify its reliance on section 31(1) to deny access to the records.

Public authority's submissions

64. The Commission relies on section 31(1) to deny public access to all of the responsive records considered in this review.
65. In its internal review decision, the Commission explained that premature disclosure of the records could reasonably have a serious adverse effect both on the financial interests of Bermuda and the Government's ability to manage the national economy.
66. The Commission explained that in 2017 while NAMLC agencies were conducting the National Risk Assessment, Bermuda (led by NAMLC) was also in the process of preparing for the assessment by the CFATF of Bermuda's AML/ATF measures, which was to start in March 2018. As of 31 January 2018, the date of the PATI request, Bermuda's Mutual Evaluation by CFATF was still pending²¹.

Applicant's submissions

67. The Applicant did not make submissions.

Discussion

68. The Information Commissioner considers the Commission's reliance on section 31(1) to refuse public access to the remaining records which are responsive, fall within the scope of the PATI Act and which she has not already found to be exempt, namely, records 1, 7, 18, 20, 20a, 20b, 21, 21a, 22, 22a, 27, 28, 35, 36, 36a, 39, 39a, 42, 43, 48, 55, 58, 58a, 61, 63, 63a, 68, 71-73, 73a, 78, 79, 81, 84, 87, 88, 90-93, 99, 103, 105, 108-111, 113, 117, 119, 120, 123-125, 127, 128, 128a, 134, 136-138, 140, 142, 145-147, 149-152 and parts of records 17, 57, 75, 97, 116, 143, 144, 148 and 154.

²¹ The final [Mutual Evaluation Report: Anti-money laundering and counter terrorist financing measures - Bermuda \(Mutual Evaluation Report\)](#) was published in January 2020.

[1] What is the relevant financial interest of Bermuda or aspect of the Government's ability to manage the national economy?

69. The Commission submitted that premature disclosure of the records identified in paragraph 68 could jeopardise both Bermuda's financial interests as well as the Government's ability to manage the national economy. The Commission provided limited submissions to support its claim, and did not clearly specify the financial interest or the aspect of the Government's ability to manage the economy.
70. In this case, however, the content of the withheld records and information in the public domain, make clear that the Commission views Bermuda's assessment by the CFATF as the relevant financial interest. The content of the withheld records also show another matter that is considered by the Commission as the relevant aspect of the Government's ability to manage the national economy. The Information Commissioner cannot explain the matter in this Decision without disclosing the content of the relevant records. She is satisfied, however, that there is sufficient ground to continue the analysis on the Commission's reliance on this exemption.

[2] What is the relevant serious adverse effect to the financial interest of Bermuda or aspect of the Government's ability to manage the national economy?

71. A careful review of the withheld records indicates the potential risk of specific, serious adverse effects upon the then-upcoming external assessment by CFATF²². Although the Information Commissioner cannot describe this potential risk in any detail, the adverse effects would arise from overly broad or premature disclosures while the Government was in the midst of the CFATF process. Having carefully reviewed the withheld records, the Information Commissioner accepts that specific adverse effects on another relevant matter were identified, and this is related to the Government's ability to manage the economy.

²² The content of withheld record 35a, for example, elaborate the concerns about Bermuda's financial interests and the management of the economy.

[3] How can disclosure cause the identified serious, adverse effect to Bermuda's financial interest or the Government's ability to manage the national economy?

72. The Commission did not make any submissions explaining how disclosure of the records or parts of the records can cause the identified serious, adverse effect to Bermuda's financial interest or the Government's ability to manage the economy.
73. Upon a careful review, however, it is clear from records 7, 72, 73a, 128a and 137 as well as parts of records 1, 27, 39a, 117, 123, 127 and 134 that their disclosure could result in an overly broad or premature disclosure of the information in the records related to the pending CFATF assessment and could cause the adverse effects that have been identified. These include records such as early draft documents, vulnerability and challenges assessments viewed out-of-context, and raw information or data.
74. Similarly, other parts of records 7, 72, 73a, 128a and 137 as well as parts of records 1, 27, 39a, 117, 123, 127 and 134 contain information whose premature disclosure, either in part or in full, would cause harm to the Government's ability to manage the national economy.
75. In contrast, the remaining withheld records or parts of records contain innocuous or general information only. Nothing on the face of the records indicate their disclosure could cause the identified serious adverse effects:
 - a. records 18, 35, 36a, 42, 43, 48, 58, 61, 63, 68, 81, 84, 90, 99, 103, 105, 108, 110, 111, 119, 120, 125, 140, 142, 147 and 149-152, as well as parts of records 17, 57, 75, 97, 116, 123, 127, 143, 144, 148 and 154 are records relating to day-to-day NAMLC activities, such as tasks, meeting or training arrangements and the Commission's participation on those meetings;
 - b. records or parts of records 20, 22, 28, 36, 39, 55, 71, 73, 78, 128, 134, 136, 138 and 146 are straightforward cover emails to certain documents and any relevant responses;
 - c. records or parts of records 79, 87, 88, 91-93, 109, 113, 117 and 124 are the Commission's former Executive Director's email forwarding news articles to NAMLC;
 - d. records 20a, 20b, 21, 21a, 22a and 145 do not contain any information that is specific to Bermuda; and

- e. the remainder of records 1, 27 and 39a contain general information about gaming industry regulatory standards, a summary of the state of gaming industry and relevant regulations in Bermuda at the relevant time and/or proposed recommendations.
76. Finally, although records 63a and 58a are documents used by NAMLC as part of its work relating to the assessment of Bermuda's compliance with FATF's Recommendations and Immediate Outcomes as well as the effectiveness of AML/CFT systems, they contain information that was available in the public domain at the time of the PATI request, and still is available. Disclosure of these records could not reasonably be expected to cause the serious adverse effects that have been identified.
77. Given the above, the Information Commissioner is not satisfied that the Commission was justified in withholding the records or parts of records identified in paragraphs 75 and 76 under section 31(1) of the PATI Act, because the Commission could not show how their disclosure could lead to the identified adverse effects. The exemption in section 31(1) is not considered further for these records.

[4] Could the serious, adverse effect reasonably be expected to occur?

78. After careful review of records 7, 72, 73a, 128a and 137 as well as parts of records 1, 27, 39a, 117, 123, 127 and 134, the Information Commissioner is satisfied that disclosure of this information at the time of the PATI request or internal review decision could reasonably have been expected to lead to the identified adverse effect.
79. Specifically, premature or overly broad disclosures of records related to the upcoming CFATF assessment would have been expected to negatively impact the evaluation process. In reaching this conclusion, the Information Commissioner has considered not only the content of the withheld records, but also the Mutual Evaluation Reports issued by CFATF at the end of its assessments. The final reports offer thorough and well-developed assessments of the status of each countries' adoption of the CFATF recommendations and the status of their implementation. The published reports are a final product reflecting years of preparatory work and self-assessment. The impact of premature or overly broad disclosure prior to this final report, therefore, could reasonably be expected to cause the identified serious adverse effect.
80. For the same reasons, the other identified harm to the Government's ability to manage the economy could reasonably be expected to occur.

[5] If the exemption is engaged, does the balance of the public interest require disclosure?

81. The Information Commissioner accepts that there is a general public interest in transparency. Disclosure of the records listed in paragraph 78 could have informed the public of the ongoing efforts to assess and strengthen Bermuda's AML/CFATF efforts with respect to the areas which fell within the Commission's expertise. It would further the purposes in section 2 of the PATI Act to promote accountability and enable the public to engage in advocacy and consultation around further regulations or development of the new gaming industry.
82. At the same time, the public has a strong interest in the orderly administration of assessment and external evaluation processes. This is particularly true when public sector evaluations result in the publication of a final report that appropriately highlights the status of the public authority's performance or programs.
83. The Information Commissioner is satisfied that, on balance, the public interest favours maintaining the exemption for the records listed in paragraph 78.

Conclusion

84. The Information Commissioner is not satisfied that the Commission was justified in finding that the exemption under section 31(1) was engaged for records 18, 20, 20a, 20b, 21, 21a, 22, 22a, 28, 35, 36, 36a, 39, 42, 43, 48, 55, 58, 58a, 61, 63, 63a, 68, 71, 73, 78, 79, 81, 84, 87, 88, 90-93, 99, 103, 105, 108-111, 113, 119, 120, 124, 125, 128, 136, 138, 140, 142, 145-147 and 149-152, as well as parts of records 1, 17, 27, 39a, 57, 75, 97, 116, 117, 123, 127, 134, 143, 144, 148 and 154.
85. Finally, the Information Commissioner is satisfied that the Commission was justified in denying access to records 7, 72, 73a, 128a and 137, as well as parts of records 1, 27, 39a, 117, 123, 127 and 134 under section 31(1) of the PATI Act because their disclosure could reasonably be expected to have a serious, adverse effect on the financial interests of Bermuda or on the Government's ability to manage the national economy.

Personal information – section 23

86. Public authorities are justified in denying public access to a record under section 23(1) if it consists of personal information. Section 24(1) defines personal information as "information recorded in any form about an identifiable individual".
87. Section 24(2) contains a number of exceptions to the broad definition of personal information in section 24(1). Under section 24(2)(a) personal information does not include information about an individual who is or was an officer or employee of a public authority

that relates to the position or functions of the individual. The Information Commissioner has consistently explained that the definition of personal information in section 24(1) is very broad and the exclusion in section 24(2)(a) is very narrow. Routine personal work information of public officials still falls within the definition of personal information. This does not mean their personal information will always have to be withheld. Rather, the disclosure of their personal information should be based on consideration of the public interest test in section 23(6).²³

88. Section 24(2)(b) also excludes from the definition information about an individual who is or was performing services under a contract for a public authority that relates to the services performed, which includes the terms of the contract and the name of the individual.
89. The personal information exemption does not apply in certain circumstances set out in section 23(2) that are not relevant in this review.
90. The personal information exemption is subject to the public interest test in section 23(6). In the context of personal information, the public interest test requires a balancing of the public interests in favour of knowing an individual's personal information, on the one hand, against the privacy rights of the individual and any other public interest in favour of confidentiality, on the other.
91. When considering the public interest test against and in favour of a personal information disclosure, public authorities should take into account the following factors²⁴:
 - 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, which would include consideration of whether sensitive personal information was involved, the potential consequences of disclosure on the individual, and the individual's reasonable expectations of privacy; and
 - c. Whether disclosure of the personal information is necessary to further the public interests that have been identified.
92. The disclosure of the personal information must also be necessary. The Information Commissioner will consider whether the public interest concerns can be met by disclosure

²³ [Decision 18/2022](#), [Ministry of Health Headquarters](#), para. 185.

²⁴ [Decision 02/2019](#), [Office of the Governor](#), para. 51.

of other information in the records that interferes less with an individual's right to privacy. If so, the public interest concerns in favour of disclosure may be given less weight in the balance than the individual's privacy rights and freedoms.

93. In sum, to appropriately rely on the personal information exemption in section 23(1), public authorities must consider²⁵:

[1] Whether the record 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 exemption in section 23(2) apply to the records?

[4] If the exemption on personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure?²⁶

94. The personal information exemption is the only exemption which the Information Commissioner would invoke on her own accord, as has happened in this review.²⁷

Discussion

95. The Information Commissioner considers the personal information exemption in section 23(1) in relation to the records or parts of records which she did not find to be exempt under the provisions considered above or which the Commission is no longer withholding in full. These are parts of records 17, 18, 20, 22, 28, 35, 36, 36a, 39, 42, 43, 48, 55, 57, 58, 61, 63, 68, 71, 73, 75, 76, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142-152 and 154.

[1] Whether the records contain information about an identifiable individual?

96. In reviewing the records identified in paragraph 95, the Information Commissioner considers information about identifiable individuals which can be categorised as:

a. officers or employees of public authorities, including the Commission and other members of NAMLC;

²⁵ [Decision 02/2019](#), [Office of the Governor](#), para. 56.

²⁶ Disclosure of records consisting of personal information should also be made if disclosure would benefit the individual, in accordance with section 23(6) of the PATI Act, which is irrelevant in this case.

²⁷ [Decision 01/2018](#), [Bermuda Tourism Authority](#), para. 27.

- b. consultants hired by public authorities (records 36, 42, 43, 58 and 68); and
- c. individuals associated with private entities (records 48 and 145).

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

- 97. Section 24(2)(a) does not apply to the personal work information of the officers or employees of public authorities in the records or parts of records identified above. The personal work information of those officers or employees is attached to them as individuals and is, therefore, not related to their 'position or functions'.
- 98. Section 24(2)(b) applies to the names of the consultants hired by public authorities. It also applies to the performance of their services, such as their attendance in meetings, their comments on public authority's works, etc. Information relating to the names of the consultants as well as the performance of their services in records 36, 42, 43, 58 and 68 is therefore excluded from the definition of 'personal information'. The application of the personal information exemption to this category of information is not considered further.

[3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

- 99. The Information Commissioner is satisfied that none of the exemptions in section 23(2) applies to the personal information of the officers or employees of public authorities, elected public official or individuals associated with private entities identified above. No consent to disclosure was given and the information does not relate to the Applicant.

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

- 100. A general public interest exists in knowing who are the individuals involved with the work of NAMLC, as well as in having a fuller understanding of the professional relationships between the Commission and NAMLC. Disclosure of the individuals involved in the Commission and NAMLC also furthers accountability to the public for decision making by those authorities.
- 101. With respect to the fairness of disclosure, most of the personal work information of officers or employees of public authorities is not sensitive personal information and does not relate to the private lives of those individuals. Nevertheless, officers or employees who did not hold public-facing or decision-making roles have a reasonable expectation

that their personal work information will not be made public. Disclosure of their personal work information would be both unfair and unnecessary.

102. In contrast, the officers or employees of public authorities who hold public-facing and decision-making roles, such as permanent secretaries, heads of department and elected public officials should have a reasonable expectation that information about their work may be made public. This is especially true for individuals working within sectors that are subject to heightened public scrutiny. Disclosure of these individual's personal work information is also necessary for the accountability of decision making by leadership within the public sector.
103. Finally, individuals associated with private entities continue to have a reasonable expectation of privacy concerning their personal information and disclosure of their personal information is unnecessary to further any public interest. The single exception is the personal information of individuals in record 145, which is available in the public domain and thus there is no basis for withholding it²⁸.
104. Given the above, disclosure of certain personal information of particular officers or employees of authorities, as well as that of individuals associated with private entities found in parts of records 17, 18, 20, 22, 28, 35, 36, 36a, 42, 43, 48, 55, 57, 58, 61, 63, 68, 71, 73, 75, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142, 146, 147, 149-152 and 154 would be unfair and unnecessary. The public interest would, on balance, be better served by non-disclosure than by disclosure of their personal information.
105. In contrast, the disclosure of other personal information of officers or employees of public authorities who hold public-facing or decision-making roles, which include the elected public officials, as well as the publicly available information of individuals associated with private entities in parts of records 17, 18, 20, 22, 28, 35, 36, 36a, 39, 42, 43, 48, 55, 57, 58, 61, 63, 68, 71, 73, 75, 76, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142-152 and 154 would be fair and necessary. The public interest would, on balance be better served by disclosure than by non-disclosure of their personal information.

Conclusion

106. The Information Commissioner is satisfied that section 23(1) is only applicable to parts of records 17, 18, 20, 22, 28, 35, 36, 36a, 42, 43, 48, 55, 57, 58, 61, 63, 68, 71, 73, 75, 78,

²⁸ See https://casinowebinar.com/2017_Title_31_Compliance_Webinar.pdf.

79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142, 146, 147, 149-152 and 154 because they contain information about identifiable individuals and disclosure is not required by the balance of the public interest.

Conclusion

107. The Information Commissioner is satisfied that:

- a. records 6, 35a, 37a, 51a, 63, 64a and 74a-74d are responsive to the PATI request;
- b. the PATI Act does not apply to records 5, 6, 8-11, 15, 16, 19, 19a-19c, 23, 24, 29, 30, 33, 34, 35a-35c, 37, 37a, 50, 50a, 50b, 51, 51a, 52, 53, 53a, 55a, 64, 64a, 67a, 74 and 74a-74d, part of records 17, 57, 75, 116, 143, 144 and 154 by virtue of section 4(1)(b)(v) and (vi);
- c. the Commission was justified in relying on section 37(1) to deny access to records or parts of records 3, 4, 4a-4c, 12, 13, 13a, 66, 97 and 148 because disclosure of this information is prohibited by section 31(1) of the BMA Act; and
- d. the Commission was justified in relying on section 31(1) to deny access to records 7, 72, 73a, 128a and 137 as well as parts of records 1, 27, 39a, 117, 123, 127 and 134 because their disclosure could reasonably be expected to have a serious adverse effect on the financial interests of Bermuda or on the ability of Government to manage the national economy.

108. The Information Commissioner is not satisfied that the Commission was justified in relying on section 31(1) of the PATI Act to deny access to records 18, 20, 20a, 20b, 21, 21a, 22, 22a, 28, 35, 36, 36a, 39, 42, 43, 48, 55, 58, 58a, 61, 63, 63a, 68, 71, 73, 78, 79, 81, 84, 87, 88, 90-93, 99, 103, 105, 108-111, 113, 119, 120, 124, 125, 128, 136, 138, 140, 142, 145-147 and 149-152 as well as parts of records 1, 17, 27, 39a, 57, 75, 97, 116, 117, 123, 127, 134, 143, 144, 148 and 154.

109. Finally, the Information Commissioner is satisfied that section 23(1) is applicable to withhold personal information in parts of records 17, 18, 20, 22, 28, 35, 36, 36a, 42, 43, 48, 55, 57, 58, 61, 63, 68, 71, 73, 75, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142, 146, 147, 149-152 and 154 because they contain information about identifiable individuals whose disclosure is not required by the public interest.

110. The Information Commissioner acknowledges the regrettable delays in this review, as well as several related reviews involving the Commission, that arose from circumstances

both internal and external to her office. For this, she apologises to the Commission, Applicant, third parties and the public.

Decision

The Information Commissioner finds that the Public Access to Information (**PATI**) Act does not apply to some records in this review by virtue of section 4(1)(b)(v) and (vi). The Information Commissioner further finds that the Bermuda Gaming Commission (**Commission**) was justified in denying access to the records or parts of records under section 37(1) and justified in part in denying access under section 31(1) of the PATI Act. Finally, the Information Commissioner finds that some information in the records is exempt under section 23(1) of the PATI Act as personal information but that disclosure of some of the personal information is in the public interest.

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

- varies the refusal for records 5, 6, 8-11, 15, 16, 19, 19a-19c, 23, 24, 29, 30, 33, 34, 35a-35c, 37, 37a, 50, 50a, 50b, 51, 51a, 52, 53, 53a, 55a, 64, 64a, 67a, 74 and 74a-74d, part 1 of records 17, 57, 75, 116, 144 and 154 and parts 1-4 of record 143 to deny the request by virtue of section 4(1)(b)(v) and (vi);
- varies the refusal for records or parts of records 3, 4, 4a-4c, 12, 13, 13a, 66, 97 and 148 to deny access under section 37(1);
- varies the refusal for records or part of records 17, 18, 20, 22, 28, 35, 36, 36a, 42, 43, 48, 55, 57, 58, 61, 63, 68, 71, 73, 75, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142, 146, 147, 149-152 and 154 to deny access under section 23(1);
- affirms the Commission's reliance on section 31(1) to deny public access to records 7, 72, 73a, 128a and 137 as well as parts of records 1, 27, 39a, 117, 123, 127 and 134; and
- reverses the denial of access to records or parts of records 1, 13, 17, 18, 20, 20a, 20b, 21, 21a, 22, 22a, 27, 28, 35, 36, 36a, 39, 39a, 42, 43, 48, 55, 57, 58, 58a, 61, 63, 63a, 68, 71, 73, 75, 76, 78, 79, 81, 84, 87, 88, 90-93, 97, 99, 103, 105, 108-111, 113, 116, 117, 119, 120, 123-125, 127, 128, 134, 136, 138, 140, 142-152 and 154, and orders the Commission to disclose the records, in whole or in part as required.

The Information Commissioner requires the Commission to disclose the records or parts of records, as directed by this Decision and the accompanying Order, on or before **Wednesday, 8 February 2023**.

Judicial Review

The Applicant, the Bermuda Gaming Commission, 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

The Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Bermuda Gaming Commission 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
21 December 2022

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Application

- 4 (1) Subject to subsection (2), this Act does not apply to –
- ...
 - (b) records obtained or created by any of the following public authorities in the course of carrying out their functions—
 - ...
 - (v) the Department of Public Prosecutions which, for the purposes of this section, includes the Justice Protection Administrative Centre;
 - (vi) the Attorney General’s Chambers;
 - ...
- (2) The reference to records in subsection (1) does not include records relating to the general administration of –
- ...
 - (b) any public authority referred to in subsection (1)(b).
 - ...

Public interest test

- 21 (1) 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—

...

(2) But “personal information” does not include—

(a) information about an individual ... who is or was an officer or employee of a public authority that relates to the position or functions of the individual;

(b) information about an individual who is or was performing services under contract for a public authority that relates to the services performed, including the terms of the contract and the name of the individual;

...

Financial and economic interests

31 (1) Subject to subsection (2), a record is exempt from disclosure if its disclosure, or premature disclosure, could reasonably be expected to have a serious adverse effect on the financial interests of Bermuda or on the ability of the Government to manage the national economy.

(2) A record shall be disclosed if disclosure of it is in the public interest.

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.

...

Bermuda Monetary Authority Act 1969

Secrecy

31 (1) Except in so far as may be necessary for the due performance of his functions under the Act or other statutory provision, and subject to subsections (1AA), (1B), (1C) and (1D) any person who is, or is acting as, an officer, a servant, an agent or an adviser of the Authority shall preserve and aid in preserving secrecy with regard to all matters relating

to the affairs of the Government or the Authority or of any person that may come to his knowledge in the course of his duties.

...

Punishment on summary conviction: a fine of \$50,000 or imprisonment for two years or both.

Punishment on conviction on indictment: a fine of \$100,000 or imprisonment for five years or both.

(1AA) Subsection (1) does not preclude the disclosure of information—

...

(c) if the information is or has been available to the public from other sources;

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