

Decision Notice

Decision 03/2023: Bermuda Police Service

Internal emails on criminal complaint

Reference no: 20201005

Decision date: 28 March 2023

Summary

On 30 August 2020, the Applicant made a Public Access to Information request (**PATI**) to the Bermuda Police Service (**BPS**) for, among others, emails on a criminal complaint made by the Applicant. The BPS denied the PATI request on the grounds of it being frivolous and vexatious under section 16(1)(e) of the PATI Act. During the Information Commissioner's review, the BPS abandoned its reliance on section 16(1)(e) and provided the Applicant with the responsive records.

In light of the BPS's revised position, this Decision finds that there are no issues for the Acting Information Commissioner to review. The Acting Information Commissioner does not require the BPS to take any further action in response to this request.

Relevant statutory provisions

Public Access to Information (PATI) Act 2010: section 16(1)(e) (frivolous and vexatious request).

The full text of the statutory provision cited above is reproduced in the Appendix to this Decision. The Appendix forms part of this Decision.

Background

1. On 30 August 2020, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**BPS**) for the complete file on a criminal complaint made by the Applicant that was sent to the Department of Public Prosecutions (**DPP**). This included witness statements, charge sheets, summary of evidence, and all other documents in the file. The Applicant also requested email correspondence exchanged between specific officers about the complaint.
2. The BPS issued an initial decision on 5 October 2020 denying the PATI request under section 16(1)(e) of the PATI Act, because the Head of Authority was of the opinion that the request was frivolous or vexatious.
3. On 5 October 2020, the Applicant sent the BPS an email requesting an internal review. The BPS informed the Applicant that same day that, because the refusal was made by the Commissioner of Police as the Head of Authority, the Applicant's recourse was to apply for an independent review by the Information Commissioner.

4. The Applicant subsequently submitted a timely application seeking an independent review by the Information Commissioner.

Investigation

5. The application was accepted as valid. Because the BPS's decision was made by the Head of Authority, and the intention of the parties was for the Information Commissioner to issue a decision on this matter, the Information Commissioner accepted that a referral by the BPS under section 44(1) of the PATI Act shall be deemed to have taken place.
6. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the BPS to determine whether its initial reliance on the administrative ground was justified.
7. The Information Commissioner notified the BPS that the Applicant had made a valid application.
8. During the review, the Applicant confirmed that they no longer wished to pursue access to the complete file on the criminal complaint that was sent to the DPP and only wish to obtain access to the email correspondence between specific BPS officers about the complaint.
9. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority and the applicant a reasonable opportunity to make representations. The BPS and the Applicant were invited to comment on this application and to make submissions to the Information Commissioner for consideration in this review. The BPS was further asked specific questions to justify its reliance on section 16(1)(e) of the PATI Act. Both the BPS and the Applicant made submissions.
10. In its submissions, the BPS conceded that its reliance on section 16(1)(e) was not justified and confirmed that it no longer relied on the administrative ground.
11. On 20 March 2023, the BPS provided the responsive emails to the Applicant.

Acting Information Commissioner's analysis and findings

12. In coming to a decision on this matter, the Acting Information Commissioner considered all the relevant information provided by the Applicant and the BPS. She is satisfied that no matter of relevance has been overlooked.

13. Considering the BPS acknowledged that its reliance on section 16(1)(e) was not justified and that it no longer relied on the administrative denial ground to deny the PATI request as well as the disclosure made, the Acting Information Commissioner finds that no issue remains for her to consider in this review.

Decision

The Acting Information Commissioner is satisfied that there are no issues for her to consider in this review. The Acting Information Commissioner does not require the BPS to take any further action in response to this request.

Judicial Review

The Applicant, the BPS, 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 appeal must be made within six months of this Decision.



Answer Styannes
Acting Information Commissioner
28 March 2023

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Refusal of request on administrative grounds

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

...

(e) the request is, in the opinion of the head of authority, frivolous or vexatious;

**Information Commissioner for Bermuda
Maxwell Roberts Building
4th Floor
One Church Street
Hamilton, HM11
www.ico.bm
441-543-3700**