

Decision Notice

Decision 14/2023: Bermuda Police Service

Probation-related emails

Reference no: 20210318

Decision date: 29 June 2023

Summary

On 26 October 2020, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**BPS**) for emails about not being confirmed in their rank at the end of probation. The BPS denied the PATI request under section 16(1)(a), stating that no records existed. During the Information Commissioner's review, the BPS relied on another administrative denial, because it also believed the PATI request was vexatious under section 16(1)(e) of the PATI Act. Later though, once it identified responsive records, the BPS abandoned both grounds and issued an initial decision to the Applicant.

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

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record did not exist); section 16(1)(e) (frivolous or vexatious request).

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

Background

1. On 26 October 2020, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**BPS**) for emails amongst senior leaders about the Applicant's probation (**item 1**) as well as not being confirmed in their rank or being demoted (**item 2**).
2. The BPS's initial decision of 7 December 2020 confirmed that it held records responsive to both items of the PATI request. It, however, denied the PATI request in full under the exemption in section 30(1)(b) of the PATI Act, about a public authority's operations.
3. In response to the Applicant's request for an internal review of 7 December 2020, the BPS issued an internal review decision on 14 January 2021, upholding its initial decision.
4. Upon the Applicant's application, the Information Commissioner commenced an independent review no. 20210201 of the BPS's 14 January 2021 internal review decision. On 12 March 2021 and while review no. 20210201 was ongoing, the BPS informed the

Applicant that no emails concerning their non-confirmation in rank or demotion, which would have been responsive to item 2 of the PATI request, were actually held. The BPS therefore effectively refused the Applicant's request for item 2 under section 16(1)(a) of the PATI Act. It explained that its reliance on the exemption in section 30(1)(b) applied to item 1 only, i.e., the emails relating to the Applicant's probation.

5. Because the BPS's 12 March 2021 decision was sent on behalf of the Head of Authority, the Information Commissioner and the parties agreed to treat it as the BPS's internal review decision on the Applicant's request for item 2. The Applicant subsequently submitted a timely application seeking an independent review by the Information Commissioner, which has led to this Decision. For clarity, this review considered the BPS's 12 March 2021 refusal of the Applicant's request for item 2 only. The BPS's handling of the Applicant's request for item 1 is considered in the separate but related review no. 20210201.

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 issue the Applicant wanted her to review.
7. 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 reliance on the administrative ground was justified.
8. The Information Commissioner notified the BPS on 9 April 2021 that the Applicant had made a valid application.
9. At an early stage of this review, the BPS claimed that the Applicant's PATI request was vexatious. As such, in addition to considering the BPS's original claim that emails responsive to item 2 did not exist (section 16(1)(a)), this review considered the BPS's claim that the Applicant's request was vexatious (section 16(1)(e)).
10. 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 BPS and the Applicant were invited to comment on the issues under review and made submissions.

11. In its submissions of 8 June 2023, the BPS confirmed that it no longer relied on the administrative grounds. The BPS had identified emails about the Applicant's non-confirmation in rank or demotion. On 28 June 2023, it issued an initial decision granting the Applicant access to most of the records it had recently identified.

Information Commissioner's analysis and findings

12. In coming to a decision on this matter, the 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.

Public authority's submissions

13. The BPS changed its position and conceded that its reliance on the administrative denial grounds in sections 16(1)(a) and (e) was not justified.

Applicant's submissions

14. The Applicant explained their dissatisfaction with the BPS's recent initial decision and disclosure. The Applicant believed that not all responsive records were identified. They disagreed with the BPS's reliance on the exemptions to withhold the remaining responsive records.

Discussion

15. Considering the BPS no longer relied on the administrative denial grounds in sections 16(1)(a) and (e), the Information Commissioner finds that no issue remains for her to consider in this Decision. In light of the BPS's initial decision of 28 June 2023, the Information Commissioner does not require the BPS to take any further action.
16. The Information Commissioner notes the Applicant's dissatisfaction with the BPS's initial decision and disclosure. As explained to the Applicant, however, the correct step to challenge the BPS's initial decision and disclosure is by requesting an internal review by the Head of Authority. If they were to be dissatisfied with the outcome of the internal review, the Applicant will then have the right to seek an independent review by the Information Commissioner.

Decision

The Information Commissioner is satisfied that no issue remained for her to consider in this review, once the Bermuda Police Service (**BPS**) abandoned its administrative denial of the Applicant's request. The Information Commissioner does not require the BPS to take further action with respect to this Decision.

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.



Gitanjali S. Gutierrez
Information Commissioner
29 June 2023

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Refusal of request on administrative grounds

- 16 (1) A public authority may refuse to grant a request if —
- (a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;
 - ...
 - (e) the request is, in the opinion of the head of authority, frivolous or vexatious;
 - ...

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