

Decision Notice

Decision 22/2023: Bermuda Police Service

Complaint records

Reference no: 20210705

Decision date: 15 August 2023

Summary

On 30 June 2021, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**BPS**) for emails about complaints made against certain police officers. The BPS denied the PATI request under section 16(1)(e), because the Head of Authority was of the opinion that the request was frivolous or vexatious. During the Information Commissioner's review, however, the BPS abandoned its reliance on the administrative ground.

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 requires the BPS to issue a new initial decision in response to this PATI request.

Relevant statutory provisions

Public Access to Information Act 2010: 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 30 June 2021, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**BPS**) for:
 - a. Any complaints made by serving police officers against certain senior police officers;
 - b. Transfer or referral to the Police Complaints Authority or the Office of the Governor of any of the above complaints; and
 - c. Outcome of the complaints.
2. On 5 July 2021, the Head of Authority via the BPS's Information Officer informed the Applicant that their request was denied under section 16(1)(e), because the Head of Authority was of the opinion that the request was frivolous or vexatious. On the same day, the Applicant applied for an independent review by the Information Commissioner.

Investigation

3. The application to the Information Commissioner 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 deemed that a referral of the Applicant's internal review request to her had taken place in accordance with section 44 of the PATI Act. Additionally, the Information Commissioner confirmed the issue the Applicant wanted her to review.
4. 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.
5. The Information Commissioner notified the BPS on 14 July 2021 that the Applicant had made a valid application.
6. 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 issue under review and made submissions.
7. In its submissions of 17 July 2023, the BPS confirmed that it no longer relied on section 16(1)(e). The BPS further indicated that it has initiated the search for the records responsive to the PATI request.
8. The BPS did not respond to the ICO's invitation to issue a new initial decision during the Information Commissioner's review.

Information Commissioner's analysis and findings

9. 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

10. The BPS changed its position and no longer relied on the administrative denial ground in section 16(1)(e).

Applicant's submissions

11. The Applicant did not make submission.

Discussion

12. Considering the BPS no longer relied on the administrative denial ground in section 16(1)(e), the Information Commissioner finds that no issue remains for her to consider in this Decision. Because the BPS has not issued a new initial decision on the PATI request, however, she requires the BPS to do so on or before **Tuesday, 26 September 2023**.

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 reliance on section 16(1)(e).

The Information Commissioner requires the BPS to issue a new initial decision on the PATI request as directed by this Decision and Order, on or before **Tuesday, 26 September 2023**.

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.

Enforcement

This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the BPS 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
15 August 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 —

...

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

...

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