

Decision Notice

Decision 34/2023: Bermuda Police Service

Probation-related emails

Reference no: 20210201

Decision date: 20 September 2023

Summary

The Applicant submitted a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Police Service (**BPS**) asking for emails received and sent by certain members of the senior management about the Applicant's probation. The BPS initially refused the PATI request under the exemption in section 30(1)(b) but, during the review, it abandoned its reliance on the exemption and relies on the deliberations of public authorities exemption in section 29(1).

The Information Commissioner has found that the PATI Act does not apply to certain parts of one of the responsive records under section 4(1)(b)(vi), because they were created or obtained by the Attorney General's Chambers in the course of carrying out its functions. Furthermore, the BPS was not justified in relying on section 29(1) of the PATI Act to refuse access to the records. The Information Commissioner has also found that some information in parts of the records is exempt under the personal exemption in section 23(1). The Information Commissioner has ordered the BPS to disclose copies of the records, except for any excluded or exempt information, to the Applicant.

Relevant statutory provisions

Public Access to Information Act 2010: section 4 (application); section 21 (public interest test); section 23 (personal information); section 24 (definition of personal information); section 29 (deliberations of public authorities).

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

Background

1. The background of this case, for the most part, is similar to that decided in Decision Notice 14/2023, Bermuda Police Service. This Decision considers a refusal by the Bermuda Police Service (**BPS**) of access to records responsive to item 1 of the Applicant's PATI request of 26 October 2020 only, which asked for emails amongst senior leaders about the Applicant's probation.¹

¹ The PATI request consisted of 2 items. The BPS's handling of item 2 of the PATI request was considered separately and decided in [Decision Notice 14/2023](#), Bermuda Police Service.

2. The BPS's initial decision of 7 December 2020 refused item 1 of the PATI request under the exemption in section 30(1)(b) of the PATI Act, which allows public authorities to refuse a PATI request if disclosure could reasonably have a significant adverse effect on its management-related functions. This initial decision was upheld by the BPS in its internal review decision of 14 January 2021.
3. On 1 February 2021, the Applicant made a timely application for an independent review by the Information Commissioner of the BPS's internal review decision on the PATI request.

Investigation

4. 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.
5. 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 assess the BPS's reliance on the exemption.
6. On 12 February 2021, the Information Commissioner's Office (**ICO**) notified the BPS of the Applicant's valid application and asked for a copy of the withheld records. After some clarification of the BPS's response to the 26 October 2020 PATI request, the issues in this review were narrowed on 11 March 2021 to only consider the BPS's response to item 1 of the request.
7. During the review, the BPS provided 6 responsive email chains (**records 1-6**) and 2 documents (**records 7 and 8**) that were attached to some of the emails. While the BPS initially withheld these records in full, in a separate review decided in Decision 14/2023, the BPS disclosed records 1, 2 and 6 in full and parts 1 and 2 of record 5. This Decision thus only considers the BPS's refusal to disclose records 3, 4, 7 and 8 as well as certain parts 3-7 of record 5.
8. The BPS changed its refusal grounds throughout the course of this review. At the early stage of the investigation, the BPS maintained that the Applicant's PATI request was vexatious under section 16(1)(e). It later abandoned its reliance on this administrative ground. The BPS also abandoned its reliance on the exemption in section 30(1)(b) and instead now relies on the exemption for the deliberations of public authorities in section 29(1) as well as the legal professional privilege exemption in section 35(3). The ICO

further identified that certain parts of record 5 might fall outside the scope of the PATI Act by virtue of section 4(1)(b)(vi), because they were created or obtained by the Attorney General’s Chambers (**AG’s Chambers**) in the course of carrying out its functions.

9. As required by section 47(4) of the PATI Act, the Information Commissioner afforded the BPS and the Applicant a reasonable opportunity to make representations. The ICO received formal submissions from the BPS on 5 June 2023.

Information Commissioner’s analysis and findings

10. In coming to this Decision, the Information Commissioner considered all the relevant submissions, or parts of submissions, from the BPS and the Applicant. She is satisfied that no matter of relevance has been overlooked.

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

11. As Justice Subair Williams explained in [Attorney General v Information Commissioner](#) [2022] SC (Bda) 6 Civ (25 January 2022), 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.
12. Although the PATI Act does not define the ‘functions’ of a public authority, section 7 of the Interpretation Act 1951 defines ‘functions’ as “powers conferred, or duties imposed, on the authority or officer by or under any provision of law.”
13. 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 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 Williams further agreed that records related to matters concerning the core business of the relevant public authority are not records relating to general administration².

² 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’ 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.

14. 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)?

[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)?

15. Because section 4(1)(b) addresses the applicability of the PATI Act, the Information Commissioner may consider this provision on her own accord when the parties do not raise it, as has occurred in this review.

Public authority's submissions

16. Rather than relying on section 4 of the PATI Act, the BPS submitted that the records were exempt under section 35(3) for records held by the Attorney General that are subject to legal professional privilege.

17. The BPS explained that the records were email exchanges between senior officers and their legal counsel in the AG's Chambers that fell within legal professional privilege. The BPS sought legal advice related to human resources matters. The email exchanges were labelled as "Attorney Client Privilege Communication".

Applicant's submissions

18. The Applicant did not comment on the applicability of section 4.

Discussion

19. The Information Commissioner considers the applicability of section 4(1)(b) to parts 5-7 of record 5, an email string.

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

20. Parts 5-7 of record 5 were emails obtained or created by legal counsel for the BPS in the AG's Chambers, which is a public authority listed in section 4(1)(b)(vi).

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

21. The correspondence sought and provided legal advice from the AG's Chambers for the BPS concerning human resource matter, and was marked as "Attorney Client Privilege Communication".
22. In accordance with section 71(1) of the Bermuda Constitution Order 1968, the Attorney General is the principal legal advisor to the BPS. The provision of legal advice falls squarely within this constitutional function.

[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)?

23. The request for and provision of legal advice in the correspondence did not relate to the AG's Chambers general administrative functions, as described above in paragraph 13.

Conclusion

24. The Information Commissioner is satisfied that the PATI Act does not apply to parts 5-7 of record 5 by virtue of section 4(1)(b)(vi).

Deliberations of public authorities – section 29(1)

25. A public authority may rely on section 29(1) to deny access to a public record whose disclosure would, or could reasonably be expected to, undermine the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.
26. As the Information Commissioner explained in [Decision 14/2021, Office of the Governor](#), releasing the records at issue must undermine a public authority's 'deliberative process'. This refers to the consideration or evaluation of competing arguments, information and facts with a view to making a decision³. A deliberative process is, at its most basic, the thinking process of an agency⁴. This exemption is in place to safeguard the integrity of this process for public authorities' decision making.

³ See [Decision 02/2019](#), Office of the Governor, para. 168.

⁴ See Queensland's Office of the Information Commissioner (17 September 2019), [Interpreting the legislation – Right to Information Act 2009, Deliberative Process](#), para. 3.1. See also Western Australia's Office of the Information Commissioner (October 2001), [FOI Guide No. 3, Deliberative Process](#), p. 1.

27. A public authority must show that, at a minimum, disclosure ‘could reasonably be expected to’ undermine a public authority’s deliberative process. The plain meaning of ‘undermine’ is to “lessen the effectiveness, power or ability of, especially gradually or insidiously”⁵. Whether it is reasonable to think that the harm will occur will depend on the circumstances of each case, including the timing of the request, whether the issue is still live, and the actual content and sensitivity of the information in question.
28. The exemption in section 29(1) does not apply to certain categories of information, such as factual or statistical information (section 29(2)(a)) or information in the nature of the reasons of a public authority for making a particular decision (section 29(2)(d)).
29. ‘Factual information’ is not defined in the PATI Act or the [Interpretation Act 1951](#). The Irish Freedom of Information Act 2014 has a provision similar to section 29(2)(a) of the PATI Act, and the Irish Information Commissioner’s discussion of that provision offers a useful definition of ‘factual information’ in this context. The Irish Information Commissioner has adopted the following plain meaning of “factual” as: “[s]omething that has really occurred or is actually the case; something certainly known to be of this character; hence, a particular truth known by actual observation or authentic testimony, as opposed to what is merely inferred, or to a conjecture or fiction; a datum of experience, as distinguished from the conclusions that may be based upon it”⁶. Factual information is “distinguishable from information in the form of [a] proposal, opinion or recommendation”⁷.
30. Generally, the release of factual information will not reveal deliberations or otherwise threaten a public authority’s deliberative process. Two contexts arise when this distinction between factual and deliberative materials may not stand⁸. First, in some records, the factual information may be so inextricably connected with the deliberative material that disclosure would reveal and cause harm to the public authority’s deliberation. The second context arises when a record contains selective facts collated from a larger group of facts, and the distilling of facts itself is a deliberative process. It

⁵ Oxford Dictionary of English (3rd ed. 2010).

⁶ Ireland’s Office of the Information Commissioner (August 2015), [Guidance Note, Freedom of Information Act 2014 Section 29 – Deliberations of FOI Bodies](#), paras. 3.3.1. The decisions cited in the Guidance Note relied on the definition provided by the Oxford English Dictionary.

⁷ See [Decision 14/2021, Office of the Governor](#), which referred to Ireland’s Office of the Information Commissioner (August 2015), [Guidance Note, Freedom of Information Act 2014 Section 29 – Deliberations of FOI Bodies](#), paras. 3.3.1.

⁸ See, for example, Office of the Australian Information Commissioner (December 2016), [FOI Guidelines, Part 6 – Conditional exemptions](#), para. 6.73.

indicates the facts the author found relevant or significant and those deemed irrelevant or insignificant to the matter at hand.

31. The exemption in section 29(1) is subject to the public interest test. If the exemption is engaged, the records or parts of records must still be disclosed if the public interest would, on balance, be better served by disclosure than by non-disclosure.
32. In sum, when applying the exemption in section 29(1), a public authority must ask:
 - [1] What is the relevant deliberative process involved?
 - [2] Does any of the information fall within the exceptions listed in section 29(2)?
 - [3] Could disclosure of the record reasonably be expected to undermine the identified deliberative process of a public authority?
 - [4] If the exemption is engaged, does the balance of the public interest require disclosure?
33. 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 29(1) to deny access to the records.

Public authority's submissions

34. The BPS explained that the deliberative process at issue involved the BPS's response to an allegation of misconduct against the Applicant. The deliberations included the process for deciding to extend the Applicant's probationary period and the determination of allegation of misconduct against the Applicant under the procedures set in the Police (Conduct) Orders 2016 (**Conduct Orders**).
35. The BPS submitted that disclosure could undermine this deliberative process by inhibiting officers from having free and frank discussion and the provisions of free and frank advice during the discussions. The BPS maintained that officers assessing allegations of misconduct should feel free to have discussions, agree, dissent and provide their views. The risk arises, according to the BPS, that if officers believe that their views may be subject to disclosure, their written discussions may be inhibited. Instead, officers may turn to oral discussions and this does not promote transparency and accountability.
36. The BPS acknowledged that the Applicant deserves to be informed of the reason why their probationary period was extended. It further stated that, if the Applicant required, the reason might be provided to them based on the reasons existing at the time. The BPS acknowledged that the Applicant was not provided with an official letter relating to the

extension of the probationary period. The BPS noted, however, that the Applicant already received an Order 14 Notice under the Conduct Orders which informed the Applicant of, among other things, the allegation and the appropriate authority's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct.

Applicant's submissions

37. In their correspondence with the ICO, the Applicant expressed their dissatisfaction with the BPS's response to the PATI request. The Applicant stated that the BPS has consistently denied access to records under the PATI Act since a legal action was taken against the BPS using information obtained through a separate PATI request. The Applicant further stated they were subsequently subjected to an internal investigation to prevent them from receiving further information through the PATI process.

Discussion

38. The Information Commissioner considers the BPS's reliance on the deliberations of public authorities exemption in section 29(1) in relation to records 3, 4, 7 and 8 and parts 3-4 of record 5.

[1] What is the relevant deliberative process involved?

39. The Information Commissioner accepts that the deliberative process is related to the BPS's response to the allegations of misconduct. The records touched on the BPS's thought process as it decided whether to extend the relevant officer's probationary period and which process under the Conduct Orders was appropriate for investigation of the misconduct allegations. The process involved an assessment of the information against the standards under the Conduct Orders. It also involved the seeking and weighing of advice.

[2] Does any of the information fall within the exceptions listed in section 29(2)?

40. Records 3, 4, 7 and 8 fall within the exceptions listed in section 29(2), either in full or in part.
41. First, some information in records 3 and 4, and parts 3-4 of record 5 is factual and falls within the exception in section 29(2)(a). This includes, for example, the names of the author and recipients of correspondence, dates and the content of the applicable Conduct Orders.

42. The exemption in section 29(1) is not considered further for these specific parts of records 3, 4 and 5.
43. Second, records 7 and 8 included the reasons for the decision by the Appropriate Authority for the assessment of the allegations of misconduct and to appoint a person to investigate the allegations.⁹ As required by Orders 11 and 12 of the Conduct Orders, each record reflected the Appropriate Authority's assessment and reasons for the decision to appoint an investigator. These parts of the records do not reveal the consideration of various options or evaluation of competing arguments. Rather than disclosing the BPS's deliberative process, records 7 and 8 documented the conclusions and outcome of the prior deliberative process to assess the nature of the allegations and appoint an investigator. Accordingly, records 7 and 8 fall within the exception in section 29(2)(d), and are not considered further for the exemption in section 29(1).
44. The remaining information in parts 1-3 of record 4 also revealed the reasons for the decision taken by the BPS to extend the officer's probationary period, following the decision on the nature of the allegations and the appointment of an investigator. Part 1 is an email communicating a summary of the reasons for the decision documented in record 7 and is dated after that decision was finalised. Part 2 of record 4 offered reasoning for the extension of probation and referred to the relevant Conduct Orders that was then adopted fully by the Commissioner of Police as the grounds for decision, as stated in part 3 of record 4. Because record 4 falls in full within the exceptions in section 29(2)(a) and 29(2)(d), the exemption for the deliberations of public authorities is not considered further for this record.

[3] Could disclosure of the record reasonably be expected to undermine the identified deliberative process of a public authority?

45. The remaining parts of records 3 and 5 do not touch upon the relevant deliberative process within the BPS. Instead, record 3 reported a phone conversation and lacked any deliberative analysis. Parts 3-4 of record 5 are emails between the Applicant and the BPS that touched on the BPS's decision to extend the officer's probationary period and the misconduct allegations. Further, the emails are dated subsequent to the BPS's decisions on the assessment of the allegations and the appointment of an investigator, which are documented in records 4 and 7. Because parts 3-4 of record 5 did not reveal the BPS's

⁹ Order 11 of the Conduct Order requires that "the appropriate authority must assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither".

internal discussions, weighing of competing arguments and so on, their disclosure cannot reasonably be expected to undermine the identified deliberative process.

46. Finally, the information is the type of routine communications expected from senior managers under such circumstances. Contrary to the BPS's argument in paragraph 35 above, nothing suggests that disclosure of the records would prevent or inhibit senior officers within the BPS from continuing to conduct themselves in a professional manner and provide similar advice to the Commissioner of Police when required.
47. The BPS's reliance on the exemption in section 29(1) is not considered further for records 3 and 5.

Conclusion

48. The Information Commissioner is not satisfied that the BPS was justified in finding that the exemption in section 29(1) was engaged for records 3, 4, 7 and 8 as well as parts 3-4 of record 5.

Personal information – section 23

49. Section 23(1) allows a public authority to deny public access to a record or part of a record if it consists of personal information. Section 24(1) defines personal information as information about an identifiable individual, subject to exclusions to this definition in section 24(2) that are not relevant in this review.
50. If the information in the record includes reference to a specific person, it is personal information. A record will also contain personal information if the individual's identity is reasonably ascertainable from the information.
51. The personal information exemption does not apply in certain circumstances set out in section 23(2). The exemption does not apply, for example, if the information relates to the requester or if the individual to whom the information relates has given their written consent for disclosure.
52. 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 publicly 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.

53. When considering the public interest test for a personal information disclosure, public authorities should take into account the following factors¹⁰:
- 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 information¹¹ 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.
54. The Information Commissioner will consider whether the public interest concerns, if any, can be met by disclosure 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.
55. In sum, to appropriately rely on the personal information exemption in section 23(1), the public authority must consider¹²:
- [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?¹³

¹⁰ See [Decision 02/2019, Office of the Governor](#), at para. 51.

¹¹ Under section 7(1) of the [Personal Information Protection Act 2016](#), 'sensitive personal information' means "any personal information relating to an individual's place of origin, race, colour, national or ethnic origin, sex, sexual orientation, sexual life, marital status, physical or mental disability, physical or mental health, family status, religious beliefs, political opinions, trade union membership, biometric information or genetic information".

¹² See [Decision 02/2019, Office of the Governor](#), at para. 56.

¹³ 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.

56. A public authority invoking section 23(1) has the burden to show that, on the balance of probabilities, the exemption is justified. This is also the only exemption the Information Commissioner will invoke on her own accord, as she did in this case, to safeguard the right to privacy.¹⁴

Discussion

57. The Information Commissioner invoked section 23(1) on her own accord for records 3, 4, 7 and 8 and parts 3-4 of record 5.

[1] Does the record consist of information about an identifiable individual?

58. Records 3, 4, 7 and 8 and parts 3-4 of record 5 contained information about identifiable individuals. This information can be described as the names, job titles, and contact information of the Applicant, senior BPS officers and other public officers, as well as signatures of senior BPS officers. Some information in the records also contained the views and opinions of other persons about the Applicant, as well as information about the Applicant's circumstances that might allow others to identify them as the subject of the records.

[2] Does the information fall within any exclusion in section 24(2) to the definition of personal information?

59. The information in the records does not fall within any of the exclusions listed in section 24(2). While the individuals identified in the records were officers or employees of public authorities, their personal work information is attached to them as individuals. They were not related to the individuals' position or functions and, as such, the exclusion in section 24(2)(a) does not apply.

[3] Do any exceptions in section 23(2) apply to the record?

60. Importantly, section 23(2)(a) makes an exception to the exemption for personal information when it relates to the requester. This means that, in general, the exemption for personal information cannot be used to deny an individual access to information about them. Here, however, the information about the Applicant in records 4, 7 and 8 is intertwined with the personal information of other individuals. This includes other individuals' views and opinions about the Applicant. As a result, the exception in section 23(2)(a) is inapplicable.

¹⁴ See [Decision 01/2018, Bermuda Tourism Authority](#), at para. 27.

61. In record 3 and parts 3-4 of record 5, the information that relates to the Applicant is not intertwined with others' personal information and thus falls within the exception in section 23(2).

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

Names, job titles and views of Applicant

62. All of the records contained the names and job titles for the senior BPS officers and other BPS officers. These individuals include the former most senior ranking officers within the BPS. Other less senior BPS officer's identifying information is also contained in some of the email records.
63. Disclosure of the names of the former most senior ranking officers within the BPS and their views of the Applicant will further a number of public interests and the purposes set forth in section 2 of the PATI Act. These include transparency and accountability surrounding the senior leaders' decision to extend the Applicant's probationary period and the manner in which the misconduct allegations were classified and investigated.
64. Such transparency may allow for consideration of whether the same review processes were applied uniformly and fairly to officers who were subject to disciplinary decisions by the Appropriate Authority. This includes knowing the role of the senior BPS officers in the disciplinary decisions.
65. The disclosure of the names, title and contact information for other BPS officers will not further any public interest and should remain withheld under section 23(1).
66. Although disclosure may further the public interests described above, the public interest analysis for section 23(1) also requires consideration of whether disclosure would be fair to the individuals and necessary to further the public interest, as set out in paragraph 53. As explained in [Decision 15/2023, Bermuda Police Service](#), paragraph 84, most senior officers within the BPS such as the former Commissioner of Police hold a far lesser expectation of privacy with respect to professional communications in his role as the head of the BPS. This same reasoning applies to the other ranking senior officers named in the records who are making decisions concerning the BPS's response to misconduct allegations against the Applicant. These senior officers are accountable to the public for their work-related decision making and activities. As stated, disclosure of their names, views of the Applicant, and roles in the BPS decision making process will further the identified accountability and transparency interest.

BPS senior officers' contact information and signatures

67. The Information Commissioner has considered whether the balance of the public interest required the disclosure of the signature of public authorities' officers in [Decision 32/2022, Bermuda Gaming Commission](#). In paragraph 126 of that Decision, the Information Commissioner found that such disclosure did not further any public interest. Moreover, disclosure would have been an unnecessary invasion of public officers' privacy, including to create a vulnerability for the risk of fraud. The same reasoning applied here to the signature.
68. Disclosure of the contact information for the officers, may potentially be fair in light of the expectations of privacy surrounding this information, but it is unnecessary to further the identified public interests.
69. The balance of the public interest did not require disclosure of the contact information or signatures of the senior BPS officers.

Conclusion

70. The Information Commissioner is satisfied that the contact information of the BPS officers and the names of other public officers in records 3 and 4 as well as the signature in record 7 is exempt under section 23(1). Their disclosure is not required by the public interest. She is satisfied that section 23(1) does not apply to record 7, parts 3-4 of record 5 and the remainder of records 3, 4 and 7.

Conclusion

71. The Information Commissioner is not satisfied that the BPS was justified in relying on section 29(1) of the PATI Act to refuse access to records 3, 4, 7, 8 and parts 3-4 of record 5.
72. The Information Commissioner is satisfied that section 23(1) applies to parts of records 3, 4 and 7.
73. The Information Commissioner notes that the records in this review shall be disclosed to the Applicant as containing the Applicant's own personal information, and are not disclosures of records of the Applicant's personal information to the world-at-large.

Decision

The Information Commissioner finds that the Bermuda Police Service (**BPS**) was not justified in relying on section 29(1) of the Public Access to Information (**PATI**) Act 2010 to deny access to the records responsive to the PATI request. The Information Commissioner also finds that the PATI Act does not apply to parts of record 5, by virtue of section 4(1)(b)(vi). Furthermore, she finds that parts of records 3, 4 and 7 are exempt from disclosure under section 23(1).

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

- varies the BPS's refusal for parts 5-7 of record 5 by virtue of section 4(1)(b)(vi),
- reverses the denial of access to record 8 as well as parts of records 3-5 and 7, and
- orders the BPS to disclose record 8 as well as parts of records 3-5 and 7 to the Applicant, as instructed in the Confidential Annex (Appendix 2), which forms part of this Decision.

The Information Commissioner requires the BPS's compliance as directed by this Decision Notice and the accompanying Order, on or before **Wednesday, 1 November 2023**.

Judicial Review

The Applicant, the Bermuda Police Service and any other person aggrieved by this Decision have the right to apply to the Supreme Court for review of this Decision, in accordance with section 49 of the PATI Act. Any such application 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 Bermuda Police Service 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
20 September 2023

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Public interest test

- 21 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—
- ...
 - (b) the individual to whom the information relates consents in writing to its disclosure;
 - ...
- ...
- (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—
- ...
 - (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
 - ...
- (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;
 - ...

Deliberations of public authorities

- 29 (1) Subject to subsections (2) and (3), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine, or could reasonably be expected

to undermine, the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.

(2) Subsection (1) does not apply to information contained in a record that is—

(a) factual or statistical information;

...

(d) information in the nature of the reasons of a public authority for making a particular decision.

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

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