

## Decision Notice

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**Decision 54/2023: Department of Child and Family Services**

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### **Administrative leave records**

**Reference no: 20221104**

**Decision date: 29 December 2023**

## Summary

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The Applicant submitted a request under the Public Access to Information (**PATI**) Act 2010 to the Department of Child and Family Services (**Department**) for, among others, records relating to the Director's administrative leave. The Department's internal review decision refused access to the records under the personal information exemption in section 23(1). The Department also refused access to one of the responsive records under section 37(1), because it was of the view that its disclosure was prohibited under the Children Act 1998.

The Information Commissioner has affirmed the Department's decision in part, finding that it was justified to deny access to one of the records under sections 23(1) and 37(1) of the PATI Act. She has reversed, in part, the Department's decision to deny access to the other two responsive records under section 23(1).

The Information Commissioner has ordered the Department to disclose parts of the responsive records, in accordance with this Decision and accompanying Confidential Annex and Order.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 21 (public interest test), section 23 (personal information), section 24 (definition of personal information), section 37 (disclosure prohibited by other legislation).

Children Act 1998: section 11 (disclosure of information).

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

## Background

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1. In August 2018, an advocate made allegations of misconduct against staff members of the Department of Child and Family Services (**Department**), including its Director (**Director**). The allegations led to the Director being placed on administrative leave.<sup>1</sup>
2. On 10 October 2018, the Applicant made a Public Access to Information (**PATI**) request to the Department, asking for various records. Relevant to this Decision is item 11 of the

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<sup>1</sup> For more detailed background information on this matter, see [Decision 01/2023](#), [Ministry of Legal Affairs and Constitutional Reform Headquarters](#), paragraphs 2-12.

PATI request, which asked for details “of when and why [the Department’s Director] was suspended, how long for and whether he [was] on full or partial pay.”

3. In its internal review decision dated 7 May 2019, the Department refused item 11 of the PATI request under section 3(3) of the PATI Act, on the basis that it did not hold the responsive records. In her [Decision 10/2021, Department of Child and Family Services](#), the Information Commissioner found that the Department was not justified in relying on section 3(3) in refusing item 11 of the PATI request. She ordered the Department to conduct a reasonable search to locate the responsive records and to issue an internal review decision on any records identified during the search.
4. In compliance with the Information Commissioner’s [Decision 10/2021, Department of Child and Family Services](#), on 3 November 2022 the Department issued an internal review decision which informed the Applicant that three responsive records were located during the search. The Department refused to disclose these records under the personal information exemption in section 23(1). With respect to one of the responsive records, record 3, the Department also relied on the exemption in section 37(1) because it believed that disclosure of this record was prohibited by sections 11 and 17 of the Children Act 1998 (**Children Act**).
5. On 4 November 2022, the Applicant made a timely application for an independent review by the Information Commissioner of the Department’s internal review decision.

## Investigation

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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.
7. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate, because submissions were required from the Department to determine whether its reliance on the exemptions was justified.
8. On 3 January 2023, the Information Commissioner’s Office (**ICO**) notified the Department of the Applicant’s valid application and asked for a copy of the three withheld records, which were provided and labelled as records 1-3.
9. As required by section 47(4) of the PATI Act, the Information Commissioner afforded the parties a reasonable opportunity to make representations. This included the Department, the Applicant and, as concerned third parties, the Director (**First Third**

**Party**) as well as the law firm that made the allegations (**Second Third Party**). The ICO received formal submissions from the Department, the Applicant, the First Third Party, and the Second Third Party.

## Information Commissioner’s analysis and findings

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10. In coming to this Decision, the Information Commissioner has considered all the relevant submissions, or parts of submissions, from the Department, the Applicant and the First Third Party. She is satisfied that no matter of relevance has been overlooked.
11. The Information Commissioner strives to provide as full a public explanation of her reasoning and Decision as possible. In some circumstances, however, section 53(2) of the PATI Act prevents discussion of information in a party’s submissions.

### *Disclosure prohibited by other legislation – section 37(1)*

12. 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.
13. 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.
14. The exemption in section 37(1) is not subject to the public interest test.
15. In sum, to rely on section 37(1), public authorities must consider the following<sup>2</sup>:

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

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

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

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<sup>2</sup> Information Commissioner’s [Decision 38/2023](#), [Department of Child and Family Services](#), paragraph 25.

16. 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*

17. The Department invoked the exemption in section 37(1) for record 3 only. It submitted that disclosure of record 3, either in full or in part, is prohibited by section 17 in conjunction with section 11 of the Children Act.
18. The Department explained that record 3 referenced matters that were heard in the Family Court pursuant to private proceedings under the Children Act. The Department submitted that the first paragraph of the letter confirmed this claim.
19. The Department further submitted that the author indicated that the information contained in the letter was provided to them by a litigation guardian appointed by the courts for the relevant Family Court proceedings.
20. The Department explained that a litigation guardian and counsel representing a child in legal proceedings is appointed under the Children Act and thus were employed in the administration of duties under the Children Act. Hence, in accordance with the Act, a litigation guardian and counsel are not allowed to communicate or allow to be communicated information obtained in the performance of their duties under the Children Act, unless any of the specific conditions set out in section 11(1)(a) or (b) are met.

*Applicant's submissions*

21. The Applicant submitted that record 3 could perhaps be redacted to remove any information which falls within the scope of section 11 or 17 of the Children Act.
22. The Applicant believed that more records responsive to item 11 of the PATI request existed.

*Discussion*

23. The Information Commissioner considers the Department's reliance on section 37(1) to withhold record 3 only.

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

24. The Information Commissioner is satisfied that section 11 of the Children Act identified by the Department is the relevant statutory provision creating the mandatory prohibition on disclosure. The same reasoning explained in [Decision 38/2023](#), Department of Child and Family Services, paragraphs 37 and 38, applies.

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

25. Section 11(1) of the Children Act reads:

No children's officer or person employed in the administration of this Act shall communicate or allow to be communicated information obtained in the performance of his duties under this Act except where—

- (a) giving evidence in any court; or
- (b) authorized by the Director or the Minister.

26. For a record to fall within the scope of section 11(1) of the Children Act, it must consist of information that was obtained in the performance of specific statutory duties of a children's officer or person employed in the administration of the Act. In this case the Department relied on section 37(1) on the basis that record 3 contained information obtained by a litigation guardian and counsel appointed under the Children Act during the performance of their duties. The Information Commissioner, therefore, considers:

- a. whether record 3 contains information obtained by a litigation guardian and counsel, as persons employed in the administration of the Children Act, and, if so,
- b. whether the relevant information was obtained in the performance of the duties of the litigation guardian and counsel under the Children Act.<sup>3</sup>

27. Having carefully examined record 3, the Information Commissioner is satisfied that much of it contains information obtained by a counsel or litigation guardian, as persons employed in the administration of the Children Act, while representing a child in a specified proceeding. Other parts of record 3, however, contain opinions about the implications of the information learned, concern about the Director's alleged misconduct, and views on potential changes to the Children Act. In line with the approach

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<sup>3</sup> The Information Commissioner has considered the fact that the Director received a copy of record 3 from the Permanent Secretary for the Ministry of Social Development and Sports Headquarters on 24 August 2018, as part of the administrative leave notice. Because the Director received record 3 as part of a human resources related action initiated against him, it can be argued that record 3 in its entirety was not obtained by the Director or the Department in the performance of his or its specific duties under the Children Act. Section 11(1) of the Children Act, however, refers to 'information' instead of 'record'. The Information Commissioner is thus required to look at the content of record 3 to determine whether it falls within the scope of section 11(1), as opposed to simply considering the manner in which the record came into the possession of the Director or the Department.

taken by the UK Information Tribunal<sup>4</sup>, the Information Commissioner is satisfied that parts of record 3 which contain opinions and information not specific to the litigation guardian or counsel's duties in representing a particular child were not "obtained in the performance of the duties of" the relevant litigation guardian under the Children Act. Because these parts of record 3 did not fall within the statutory prohibition in section 11(1) of the Children Act, the Information Commissioner does not need to consider them further for this exemption.

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

28. The Information Commissioner only considers this question for the parts of record 3 which she has found to fall within the statutory prohibition in section 11(1) of the Children Act.
29. The prohibition in section 11(1) of the Children Act does not apply if the disclosure of information was done in the context of giving evidence before the court or if it was authorised by the Director or the Minister. Neither of these exceptions are met in this case.<sup>5</sup>

#### *Conclusion*

30. The Information Commissioner is satisfied that the Department has justified its reliance on the exemption in section 37(1) of the PATI Act to deny access to parts of record 3,

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<sup>4</sup> In [Commission for Local Administration in England v The Information Commissioner](#), EA/2007/0087, the UK Information Tribunal considered an appeal filed by the Commission for Local Administration (CLA). The CLA challenged the Information Commissioner's decision which found that parts of the CLA's specific "complaint file" were not "obtained in the course of, or for the purpose of" the CLA's investigation of the complaint and therefore their disclosure was not prohibited under section 32(2) of the Local Government Act 1974 (LGA) and, as such, they were not exempt under section 44 of the UK Freedom of Information Act 2000. In his decision, the Information Commissioner categorised the information in the complaint file into three categories: (i) information passed to a Local Commissioner by a third party in the course of his investigation, (ii) information in documents generated by the Local Commissioner in the course of investigating the complaint which should be treated as information falling within section 32(2) of the LGA, because it had originally been obtained in the course of, or for the purposes of the investigation, and (iii) information which "did not make reference to the nature of the complaint or information obtained as a result of the investigation" (see paragraph 4). The UK Information Tribunal upheld the Information Commissioner's decision which found that information in the third category was not obtained in the course of, or for the purposes of, the CLA's investigation and subsequently was not exempt under section 44, because it made "no reference to what was involved in the investigation" and "contain[ed] no information about the matters investigated" (see paragraph 10).

<sup>5</sup> While section 11(1) gives the Director the discretion to authorise disclosure, the exercise of that discretion is limited by the other provisions in the Children Act (see paragraphs 42 and 43 of [Decision 38/2023, Department of Child and Family Services](#)).

because their disclosure is prohibited by section 11 of the Children Act. The Department did not justify its reliance on section 37(1) to deny access to the remainder of record 3.

### *Personal information – section 23*

31. 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) which, as discussed below, are not relevant in this review.
32. 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.
33. 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.
34. 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.
35. When considering the public interest test for a personal information disclosure, public authorities should take into account the following factors<sup>6</sup>:
  - a. whether disclosure will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations 2014;
  - b. whether disclosure would be fair to the individual under all of the circumstances, which would include consideration of whether sensitive personal information<sup>7</sup> was involved, the potential consequences of disclosure on the individual, and the individual's reasonable expectations of privacy; and

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<sup>6</sup> See [Decision 02/2019](#), [Office of the Governor](#), at paragraph 51.

<sup>7</sup> 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".



- c. whether disclosure of the personal information is necessary to further the public interests that have been identified.
36. 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.
37. In sum, to appropriately rely on the personal information exemption in section 23(1), the public authority must consider<sup>8</sup>:
- [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?<sup>9</sup>
38. 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 to safeguard the right to privacy.<sup>10</sup>

*Public authority's submissions*

39. The Department submitted that the records consisted of personal information or information that will reveal the identity of an individual.
40. The Department further submitted that, notwithstanding information that has been published in media outlets or other websites, the withheld records had not been released to the public.
41. The Department claimed that a precedent should not be set in releasing the personal information of government employees.

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<sup>8</sup> See [Decision 02/2019, Office of the Governor](#), at paragraph 56.

<sup>9</sup> 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.

<sup>10</sup> See [Decision 01/2018, Bermuda Tourism Authority](#), at paragraph 27.

*Applicant's submissions*

42. The Applicant pointed out that the personal information exemption is subject to the public interest test. While the Head of Authority said that a public interest test was conducted, there was no further detail to explain why the disclosure was not in the public interest.
43. The Applicant accepted that certain personal information in the relevant records can be redacted. But the Applicant was of the view that any information which pertains to the complaint and the Director's professional responsibilities should not be kept secret. The Applicant emphasised that the Director is in a position of seniority with very serious responsibilities.
44. The Applicant referred to the Information Commissioner's [Decision 01/2023](#), Ministry of Legal Affairs and Constitutional Reform Headquarters, in which the Information Commissioner described and explained the matter as being of "significant public interest".
45. The Applicant submitted that the Department was left without its leader for almost half a year due to a complaint made by a respected lawyer with an interest and expertise in issues concerning children in care.
46. The Applicant believed that more records responsive to item 11 of the PATI request existed.

*First Third Party's submission*

47. The Director as the First Third Party objected to the disclosure of any information contained in his personnel file at the Department, because it was personal information as defined by the PATI Act and the Personal Information Protection Act<sup>11</sup>. The Director believed that the matter had become vexatious and bordered on harassment and that disclosure would serve no purpose for the public interest.

*Second Third Party's submission*

48. The Second Third Party submitted that record 3 had been sent to the Government with their client's understanding that the letter would not be seen by the public due to the courts' consistent historic practice of prohibiting the media from attending Family Court proceedings, citing sections 11, 17 and 85 of the Children Act. It noted, however, that

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<sup>11</sup> Not yet come into force.

“disturbingly” the letter appeared to have been leaked to the media by one of the parties or entities that had a copy of the letter.

49. The Second Third Party confirmed that they did not have any objections to the disclosure of any parts of the letter referencing, generally, the importance of litigation guardians or counsel for children where it is a matter of public interest.

*Discussion*

50. The Information Commissioner considers the Department’s reliance on section 23(1) to withhold records 1 and 2 as well as parts of record 3 which she did not find to be exempt under section 37(1).

[1] Whether the record consists of information about an identifiable individual?

51. Item 11 of the PATI request specifically identified the Director and looked for records relating to the Director. As such, any records captured by the request would clearly relate to the Director.<sup>12</sup> In addition to the Director, records 1 and 2 as well as the remainder of record 3 contained information about other identifiable individuals, such as officers or employees of a public authority, children in the Director’s care, and their litigation guardian and counsel.

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

52. None of the exclusions in section 24(2) apply to records 1 and 2 or the remainder of record 3. Although some of the individuals identified in the relevant records or parts of records were officers or employees of a public authority, the exclusion in section 24(2)(a) does not apply because the relevant information is attached to them as individuals and does not relate to their positions or functions within their respective public authorities.

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

53. None of the exceptions in section 23(2) apply to records 1 and 2 or the remainder of record 3. Specifically, the information in these records did not relate to the Applicant and the Director had not given his written consent to disclosure.

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

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<sup>12</sup> [Decision Notice 15/2023](#), [Bermuda Police Service](#), paragraph 24.

54. The balancing of public interests under section 23(6) begins with identifying the relevant public interests at issue. As discussed in prior decisions, the public has an interest in understanding the process that was applied to investigate and resolve the allegations against the Director.<sup>13</sup> At the time, public attention was also directed at proposed amendments to section 23 of the Children Act that, in the view of children’s advocates, would have lessened the rights of children to obtain legal representation and the appointment of litigation guardians.<sup>14</sup>

#### Records 1 and 2

55. Records 1 and 2 are administrative notices sent to the Director, which set out the restrictions on his employment that would be in place while an investigation of the allegations was conducted.

56. At the time the records were located and the Department issued its internal review decision on 3 November 2022, the Government had completed its investigation against the Director. The investigation concluded that there was no misconduct by the Director and the Director returned to his post on 28 January 2019.<sup>15</sup> Given the conclusion of the investigation, the Director asserted an expectation of privacy concerning any information in his personnel file concerning this matter. While the Information Commissioner agrees that the Director had a reasonable expectation of privacy concerning information revealing the substance of the allegations (which were investigated and resulted in a conclusion that no misconduct was found), that information is not contained in records 1 and 2. The substance of the allegations is contained in record 3 and is withheld above under section 37.

57. It would be unreasonable for the Director to expect zero public scrutiny of this matter and that no further disclosure would be made of any information relating to the formal steps taken in response to the complaint. Although the Director is correct that this was a personnel matter, the public importance of proper investigation and the outcome absolving the Director of misconduct is reflected in the Government’s updates on the receipt of the allegations<sup>16</sup>, the initiation of the investigation and the Director’s

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<sup>13</sup> See [Decision 05/2021](#), [Ministry of Legal Affairs and Constitutional Reform](#), paragraphs 52 and 53. See also [Decision 01/2023](#), [Ministry of Legal Affairs and Constitutional Reform](#), paragraphs 87-91.

<sup>14</sup> See, for example, The Royal Gazette, ‘[Child expert urges House to reject amendment](#)’, 14 December 2018.

<sup>15</sup> Government of Bermuda, ‘[Director of the Department of Child and Family Services Returns to Duty](#)’, 24 January 2019.

<sup>16</sup> See, for example, the Minister for Legal Affairs statement in the Parliament reported in the [Official Hansard Report](#), 12 June 2019, page 527.

placement on administrative leave<sup>17</sup>, and, finally, the conclusion that allegations were unsubstantiated, no misconduct occurred, and the Director returned to duty. Given the disclosure of this information in the public domain, the Director's expectation of non-disclosure of information that did not speak to the content of the allegations is not reasonable in the circumstances of this review.

58. The Director remains the executive officer of the Department, an executive role accountable to the public.<sup>18</sup> Further, the investigation and results received widespread public attention due to the significance of the issues. It is reasonable to assume, for example, that families, advocates, and others who are newly engaging with the Department may seek information about the circumstances surrounding the allegations to assure themselves that all concerns have been properly investigated and resolved.
59. Considering the nature of the allegations and the vulnerability of the population served by the Department, it is not unreasonable for questions from the public to arise from time to time and to be met with information reassuring the public of the process that was undertaken to investigate the allegations and the outcome that absolved the Director of any misconduct. As the executive officer leading a department that services one of Bermuda's most vulnerable populations, the Director should reasonably expect to be accountable to the public for his leadership and work as a routine matter, rather than expect that the matter would disappear from the public record.
60. Furthermore, disclosure is necessary to further the important public interests. Disclosure is necessary to further greater public understanding of the steps taken by public authorities in response to complaints made in relation to the performance of the Department's executive officer's duties. At the time of the internal review decision, the Government had officially announced that the Director was placed on administrative leave as of 23 August 2018. Records 1 and 2 do not touch upon the nature of the allegations, but instead allow the public to confirm whether government followed the existing administrative leave procedures outlined in the relevant Collective Bargaining Agreement, Memorandum of Understanding, Conditions of Employment and Code of Conduct, and Public Service Commission Regulations.

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<sup>17</sup> [Official Hansard Report](#), 14 December 2018, page 431.

<sup>18</sup> As stated in [Decision 51/2023](#), [Department of Child and Family Services](#), paragraph 40, the expectation of privacy of a senior public officer will differ from the executive officer with outward facing accountability.

61. Having considered the nature of the information in records 1 and 2, the Information Commissioner is satisfied that the public interest in disclosure outweighs the Director's expectation of privacy and fairness with regard to such privacy.

### Record 3

62. Most of record 3 is exempt under section 37. As explained above in paragraph 27, the remaining parts of record 3 consist of general information and the counsel's opinions that did not specifically relate to the duties of the relevant litigation guardian or counsel for the represented child. The remaining parts of record 3 also do not directly reference the Director, but instead are focused on broad concerns, including the public debate at the time concerning litigation guardians and legal representation for children under the Director's care and proposed amendments to the Children Act.
63. Because the remaining parts of record 3 do not reference the Director directly, disclosure of this limited information in the record would be fair to him. The information does not reference the details of the allegation or otherwise comment on the Director's personal work information.
64. Disclosure is also necessary to further the public interest in the broader concerns about the framework for safeguarding children, particularly during legal proceedings. It would allow the public to understand what broader issues were brought to the Department's attention while amendments were being considered for the section of the Children Act allowing for the appointment of litigation guardians and legal counsel. The Second Third Party has not objected to the disclosure of these parts of record 3.
65. Given the above, the Information Commissioner is satisfied that the public interest would, on balance, be better served by disclosure of certain parts of record 3 along with records 1 and 2 (minus signature and contact details of any individuals).

### *Conclusion*

66. The Information Commissioner is satisfied that the Department properly engaged the exemption in section 23(1) of the PATI Act to deny access to certain parts of record 3 and the signature and contact details of public officers in records 1 and 2, because they consisted of personal information and their disclosure was not in the public interest. The Department was not justified in relying on section 23(1) of the PATI Act to deny access to the remainder of records 1-3, because their disclosure was in the public interest.
67. The Applicant submitted that additional records responsive to item 11 of the PATI request must have existed. As explained in paragraph 3 of this Decision, however, the question on the reasonableness of the Department's search to locate records responsive

to item 11 was addressed in [Decision 10/2021, Department of Child and Family Services](#), when the Information Commissioner discussed the claim that records responsive to the specified item were not “held by” the Department. An Order was issued by the Information Commissioner, which required the Department to conduct a reasonable search to locate the records responsive to item 11. The Department has met the requirement of the Order since, and the Applicant was informed of the same. For these reasons, this Decision does not consider the reasonableness of the Department’s search.

### ***Conclusion***

68. The Information Commissioner finds that:
  - a. the Department properly engaged the exemption in section 37(1) to deny public access to parts of record 3 only, and
  - b. the Department properly engaged the exemption in section 23(1) to deny public access to parts of records 1 and 2 and to the remainder of record 3, but that the public interest test requires disclosure of certain parts of records 1-3.

## Decision

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The Information Commissioner finds that the Department of Child and Family Services (**Department**) was justified in denying access to parts of record 3 under section 37(1) of the Public Access to Information (**PATI**) Act 2010. The Department was also justified in denying access to parts of records 1-3 under section 23(1) of the PATI Act.

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

- affirms the Department's internal review decision to withhold parts of record 3 under sections 23(1) and 37(1),
- reverses the Department's internal review decision to withhold parts of records 1 and 2 under section 23(1) and parts of record 3 under section 37(1), and
- orders the Department to disclose parts of records 1-3 as required.

The Information Commissioner requires the Department to disclose the records, as directed by this Decision and the accompanying Confidential Annex and Order, on or before **Friday, 9 February 2024**.

## Judicial Review

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The Applicant, the Department of Child and Family Services, the Third Parties, 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

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This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Department of Child and Family Services 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  
29 December 2023



## Appendix I: Relevant statutory provisions

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### 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—  
...  
(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;  
...

#### 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.  
...

## Children Act 1998

### Disclosure of information

- 11 (1) No children's officer or person employed in the administration of [the Children Act] shall communicate or allow to be communicated information obtained in the performance of his duties under this Act except where—
- (a) giving evidence in any court; or
  - (b) authorized by the Director or the Minister.
- (2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2000.

**Information Commissioner for Bermuda  
Maxwell Roberts Building  
4<sup>th</sup> Floor  
One Church Street  
Hamilton, HM 11  
ico.bm  
441-543-3700**