



Decision Notice

Decision 55/2023: Ministry of Education Headquarters

Sandys parish school decision records

Reference no: 20220529

Decision date: 29 December 2023

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Education Headquarters (**Ministry Headquarters**), asking for records in support of the Minister of Education’s decision to close the West End Primary School as announced in July 2021. Besides some records disclosed at internal review, the PATI request was administratively denied on the basis that no other records existed.

The Information Commissioner has found that the Ministry Headquarters was not justified, in part, in relying on section 16(1)(a) of the PATI Act to administratively deny the request. In accordance with section 48 of the PATI Act, the Information Commissioner affirms in part and annuls in part the internal review decision by the Ministry Headquarters. The Information Commissioner has required the Ministry Headquarters to conduct further searches and issue a new initial decision to the Applicant.

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record does not exist or cannot be found).

Public Access to Information Regulations 2014: regulation 5 (reasonable search).

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

Background

1. On 18 December 2020, the Ministry of Education Headquarters (**Ministry Headquarters**) opened a public consultation on whether to introduce one primary school per parish, as part of the Government-of-the-day’s public school reform efforts—with a public submission deadline of 12 March 2021.¹ On 22 July 2021, the Minister of Education (**Minister**) publicly released their conclusions and reasons.²

¹ See Ministry Headquarters, [Consultation on a Proposal for the Introduction of Parish Primary Schools](#) (December 2020) (**consultation proposal**); and Government of Bermuda, ‘[Ministry of Education launches public consultation](#)’ (18 December 2020).

² See Ministry Headquarters, [Parish Primary School Decisions](#) (July 2021) (**school decision report**); [Parish School Consultation Report](#) (July 2021); and [Parish School Consultation Submissions](#) (July 2021).

2. At the crux of this PATI request was the Government’s proposal to close the West End Primary School and to retain the Somerset Primary School as the selected site for Sandys parish.³
3. For context, the [consultation proposal](#) explained that the Ministry Headquarters had established a Parish Primary School Location Strategy Team (**Location Strategy Team**) to “recommend specific primary school buildings”, per parish, “to serve as redesigned, refurbished, and fit-for-purpose parish primary schools”.⁴ The [consultation proposal](#) further stated that 19 specific study factors had been identified as relevant criteria and that all primary schools were scored against each study factor using a comprehensive rubric. The primary school building with the highest score per parish as per the evaluation matrix was recommended to be redesigned and refurbished as a fit-for-purpose facility and the other primary school(s) closed.
4. The [consultation proposal](#) set out the process for evaluating the primary schools and the study factors rubric applied, at pages 34-40. There were four categories of study factors, which were weighted as follows: 20% for existing building conditions, 30% for land/property conditions, 30% for safety and health, and 20% for transportation. It also provided the weighted evaluation scores, including the scores for each study factor, for each primary school by parish.⁵
5. For Sandys parish, the [consultation proposal](#) concluded that,

Somerset Primary School achieved a higher score in four of the weighted study factors categories. The school site has a larger available acreage and capacity for development expansion, to accommodate 300 students, plus staff. It also has a large playing field that has sufficient outdoor space and a preschool located on its site.⁶

³ A community group, West End Warriors for Legacy, was advocating against West End Primary School being closed.

⁴ See page 9 of the [consultation proposal](#). It also stated that the Location Strategy Team had six members and “comprised primarily expert professionals who have specialized knowledge of buildings, and/or currently work on the Government primary school buildings on a daily basis. Together these professionals have more than 40 years of technical work experience in facilities management, estate and property management, and maintenance, repairs and renovations of Government’s office and school buildings” (pages 34-36).

⁵ See pages 41-60, with the weighted scores for the primary schools in Sandys at pages 59-60.

⁶ See page 60 of the [consultation proposal](#).

6. On 7 October 2021, the West End Warriors for Legacy (**Applicant**)⁷ made a Public Access to Information (**PATI**) request to the Ministry Headquarters, asking for all records relevant to the Minister’s decision on selecting Somerset Primary School as the Sandys parish primary school site.⁸ In essence, the PATI request posed 62 interrogatives, which challenged the Ministry Headquarters’ comparative scoring and rationales justifying the Minister’s decision on why West End Primary School would be closed.
7. On 5 December 2021, the Applicant made a timely internal review request, as they had not received an initial decision, which was due by 18 November 2021.⁹ By letter of 9 December 2021, the Ministry Headquarters acknowledged the Applicant’s PATI request. The PATI request was assigned reference no. MOE2111-02. On 13 January 2022, the Head of Authority also attempted to extend their response period, but the PATI Act does not allow for extensions for internal review decisions.
8. The Ministry Headquarters issued an internal review decision, out of time, on 23 February 2022. It disclosed records that had been located, including documents already in the public domain, and otherwise administratively denied the request. The decision also noted that the Ministry Headquarters had met with the Applicant on 24 January and 9 February 2022 to better understand their information needs.
9. On 29 May 2022, the Applicant asked for an independent review by the Information Commissioner to challenge the Ministry Headquarters’ internal review decision.

Investigation

10. Following the Information Commissioner exercising her discretion to accept the late application, it was accepted as valid. The Information Commissioner confirmed that the Applicant had made a valid request to a public authority for an internal review. Additionally, the Information Commissioner confirmed the issue the Applicant wanted her to review.

⁷ The Applicant waived their right to anonymity under section 13(4) of the PATI Act for purposes of the Information Commissioner’s Decision in this review.

⁸ The Applicant had first submitted their question list to the Ministry Headquarters on 19 July 2021, along with their community petition, and a second question list on 24 August 2021. On 7 October 2021, they made a ‘fresh’ PATI request to trigger the PATI deadlines.

⁹ Before formally asking for an internal review, the Applicant had emailed follow-ups on 29 October and 6 November 2021 about the Ministry Headquarters’ initial decision status.

11. The Information Commissioner decided that early resolution under section 46 was not appropriate, considering the parties' relationship and that the topic was contentious.
12. On 14 July 2022, the Information Commissioner's Office (**ICO**) notified the Ministry Headquarters, advising the Head of Authority to await a submission invite.
13. Also on 14 July 2022, the ICO asked to meet the Applicant, to get clear on the records sought. After liaising with their group, the Applicant replied on 22 July 2022, summarising their expectations. Their letter also asked that, if anything were still unclear, the ICO specify in writing what additional information was needed. The Applicant provided additional information several times during the review.
14. As required by section 47(4) of the PATI Act, the parties were given a reasonable opportunity to make representations to the Information Commissioner. The ICO invited the Ministry Headquarters' submissions on 28 August 2023¹⁰, including specific questions about its original search, and received them 15 September 2023. On 4 October 2023¹¹, the ICO invited the Applicant to send any other information they wished to be considered and received their submissions on 19 October 2023.

Information Commissioner's analysis and findings

15. The Information Commissioner has considered all relevant evidence, being satisfied that no matter of relevance has been overlooked.

Preliminary issue – scope of right in section 12

16. Section 12(1) of the PATI Act affords Bermudians and other residents the right to request and be given access to records that are held by a public authority, subject to the provisions of the PATI Act including exemptions from public access in Part 4. A record is defined in section 3(3) as being "held" by a public authority if the record is in the "possession or custody of, or is under the control of, that authority". Read together, these provisions give a PATI requester the right to ask for records that exist at the time of a PATI request, but do not place an obligation on public authorities to create a record in response to a PATI request.

¹⁰ The ICO first emailed this submission invite by letter of 1 August 2023 and re-sent it on hearing from the Ministry Headquarters on 28 August that they had not received it.

¹¹ The ICO first emailed this submission invite by letter of 1 September 2023 and re-sent it on hearing from the Applicant on 4 October that they had not received it.

17. Further, sections 14 and 43 of the PATI Act only require a public authority to acknowledge whether records exist and then issue a decision either granting or denying access to those records. A public authority is required to explain its reasoning to justify any denial of access to records under the PATI Act. The ICO encourages public authorities as a matter of good governance to set out as much context as possible in their decisions for requesters. A public authority, however, cannot be compelled to give answers to an applicant under the PATI Act—even when presented in the form of a PATI request. A request made under the PATI Act is meant to be about access to records, not a request for an information response.
18. Ultimately, access to public records, and the information the records contain, furthers the purposes set out in section 2 of the PATI Act, including to inform the public about decisions and actions taken by the Government and other public authorities. Once these records (or lack of records) are in hand, an individual or group can use the information in the record (or the knowledge that no such information exists) when they engage with government decision makers. The knowledge gained through the PATI Act helps level the playing field between the public and the Government. The PATI Act itself, however, is not designed to be an avenue for the public to challenge a governmental decision directly. Nor is it the Information Commissioner's role, when assessing a public authority's internal review decision, to analyse the quality or adequacy of that governmental decision which was the subject of records asked for in the PATI request.
19. As part of their application for independent review, the Applicant commented on the gaps they had found with the Ministry Headquarters' decision, for each question set out in their PATI request, in the form of a chart. The Applicant further explained specific points where they were dissatisfied with the Ministry Headquarters' explanations, by reply to the ICO's validation letter on 28 June 2022. They asked that the Information Commissioner's review require the Ministry Headquarters to produce records and explain its decision with evidence.
20. This PATI request, in large part, asked the public authority for answers to questions. It pressed the Ministry Headquarters for certain explanations or to make certain statements if records did not exist. In this sense, it was framed as part of the Applicant's public challenge against the Ministry Headquarters' proposed choice for Sandys parish. Unfortunately, a public authority cannot be compelled to answer questions posed by an applicant, unless those answers already exist in a record held by the public authority.
21. Ideally under these circumstances, during the initial response to a request, the public authority would consult with the requester on amending their request to better fit the purpose of the PATI Act.

22. With this in mind, the Information Commissioner now assesses whether the Ministry Headquarters' original search, in these circumstances, was reasonable.

Record does not exist or cannot be found – section 16(1)(a)

23. Public authorities are entitled under section 16(1)(a) to administratively deny a request if a requested record does not exist or cannot be found after all reasonable steps have been taken to find it.
24. Regulation 5 of the PATI Regulations 2014 requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. Regulation 5(2) requires a public authority to document its efforts if it has been unable to locate any record.
25. When a public authority denies a PATI request under section 16(1)(a) because a record does not exist or cannot be found, the Information Commissioner's review does not determine to a point of certainty if a record exists or can no longer be located. Rather, the Information Commissioner is required to assess whether the public authority took all reasonable steps to find a record. Further, section 16(1)(a) does not concern whether a public authority should hold a record as a matter of good public administration.
26. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following:
 - [1] the quality of the public authority's analysis of the PATI request;
 - [2] the scope of the search that it decided to make on the basis of that analysis; and
 - [3] the rigour and efficiency with which the search was then conducted.
27. The specific circumstances in each case will inform the Information Commissioner's assessment.
28. Finally, the public authority bears the burden to establish, on the balance of probabilities, that responsive records do not exist or cannot be found after all reasonable steps have been taken to find them.¹²

¹² See [Decision 04/2017](#), [Department of Health](#), at paragraphs 37-49, and more recently [Decision 01/2023](#), [Ministry of Legal Affairs and Constitutional Reform Headquarters](#), at paragraphs 30-35.

Public authority's submissions

29. The Ministry Headquarters' internal review decision described what was involved in responding to the PATI request, as follows:
 - a. The Ministry Headquarters met with the Applicant on 24 January and 9 February 2022 to review the PATI request together.
 - b. Due to the volume of questions in the PATI request, the Ministry Headquarters spent extensive time on the weekends and evenings to ensure each question in the PATI request was addressed. It searched through emails, computer files and hard files for records for every question.
 - c. Because several questions in the PATI request were hypothetical, the Ministry Headquarters did not find records responsive to certain questions. When a record was not found, the Ministry Headquarters stated this and shared related records of the same topic.
 - d. The Ministry Headquarters wrote the responsive question number in the corner of each record being disclosed. It separated the disclosed records into four scanned documents titled '21st century building', 'ministerial statements', 'supplemental questions', and 'acreage'. The Ministry Headquarters also noted that some records were from reports that had been published already.
30. In its submissions to the Information Commissioner, the Ministry Headquarters added the following:
 - a. It understood that the Applicant wanted "any and all related genre, medium [and] matter...pertaining to the requested information", such as "documents, drawings, correspondence, materials, etc.". The Ministry Headquarters reiterated that, where a question was specific, it had provided any information available; and that, where a question was hypothetical, it could not have provided any because no records existed.
 - b. The officers who conducted the search for responsive records had been directly associated with tasks related to the scoring processes. They included the Permanent Secretary, Senior Policy Analyst, Bursary Student/Policy Analyst, and the Executive Assistant. Though the Minister's email and computer had not been searched, relevant emails received by the Ministry Headquarters' staff from the Minister had been included in the response to the Applicant.
 - c. The Ministry Headquarters used various terms to search emails and computer files, including (but not limited to) parish primary consultation, consultation,

consultation decision, calculation process, scoring process, history and legacy, parish primary vision, rubric, building locations, school locations, study factors, final scoring, study factors, school redesign, strategic plan, 21st century, public meetings, meeting notes, acreage, measurements, scoring methodology, evaluation, partners, development costs, site plan, as well as each public school's name.

- d. Every effort had been made to search for responsive records, and no location where the Ministry Headquarters kept records had been excluded from its search.
31. The Ministry Headquarters affirmed that it had not retained any internal documents showing its original search efforts. In preparing its submission to the Information Commissioner, the Ministry Headquarters also did not come upon any new information that would lend it to believe it held any other responsive records.

Applicant's submissions

32. The Applicant wanted the Information Commissioner's review to verify the Ministry Headquarters' search efforts. They submitted that the Ministry Headquarters had published vague, conclusory information, but did not include its evidence to substantiate why West End Primary and Somerset Primary Schools were assigned their scores. Because of that, their PATI request sought all underlying records that showed exactly what considerations had gone into determining the mere difference of 5 points between the two schools' scores. The Applicant explained that they wanted to objectively evaluate whether the scores were arbitrary or evidence based.
33. Though the Applicant stated that they did not know exactly what responsive records the Ministry Headquarters had created or held, they wanted to see all relevant records for each question in their "carefully constructed" list. This included memoranda, notes, correspondence, minutes, working papers, reports, maps, measurements, calculations, tabulations, research, experts' resumes and all other non-exempt records.
34. The Applicant submitted that the documents sent with the Ministry Headquarters' internal review decision had partially responded to only four questions, and that the Ministry Headquarters had not produced records as required by the PATI Act. They believed they were entitled to see all responsive records that existed.
35. Where the Ministry Headquarters did not have any record for a question in the PATI request, then the Applicant wanted the Ministry Headquarters to "honestly state that there was no basis, evidence or rationale" for the score being challenged in that question. The Applicant stated that, where the Ministry Headquarters lacked evidentiary records,

it should have explained how the points the Applicant raised had been considered in the Minister's decision making—to prevent the Applicant from inferring that records did not exist because such points had never been adequately considered.

36. The Applicant further explained that their PATI request questioned whether the Ministry Headquarters had factored in other physical factors such as population catchment and climate change vulnerability, in addition to the ones publicly identified as part of its scoring system. The Applicant expected that the Ministry Headquarters would have clearly and formally acknowledged that such physical factors had not been included in the scoring system, to explain why records responsive to those parts of their PATI request did not exist.
37. The Applicant expressed their view that the Ministry Headquarters' published information about the scoring system did not refer at all to whether non-physical factors had informed the Minister's decision, despite certain replies to individual questions and references made in consultative meetings purporting that they were.
38. Finally, the Applicant emphasised a significant public interest in understanding the Minister's decision to permanently close West End Primary School, considering the school's legacy, history and existing community hub functioning.

Discussion

[1] The quality of the public authority's analysis of the PATI request

39. Having carefully reviewed the PATI request, it can be summarised as having asked for 13 sets of records on the following topics:
 - a. the retention or demolition of Somerset Preschool (question 1) (**item 1**),
 - b. the presence of a preschool as a determining factor (questions 46-48) (**item 2**),
 - c. the calculation of Somerset Primary School's acreage (questions 2, 42 and 43) (**item 3**),
 - d. the reliance on acreage in selecting the Sandys school site (questions 3, 44 and 45) (**item 4**),
 - e. studies on architectural or engineering feasibility and new build costs for Somerset Primary and West End Primary Schools (question 7) (**item 5**),
 - f. the consideration of non-physical study factors (questions 8, 9, 18-20, 22-24, 26, 29, 31-33, 40, 41, 49, 51-53 and 61) (**item 6**),

- g. the weighting and consideration of physical factors related to transport, community and sustainability (questions 12-14 and 34-37) (**item 7**),
 - h. the preservation of the history and legacy of West End Primary School (questions 25 and 27) (**item 8**),
 - i. the Location Strategy Team members' details and expertise (question 38) (**item 9**),
 - j. expert recommendations on the Ministry's vision for a parish hub (question 39) (**item 10**),
 - k. budget projections (question 60) (**item 11**),
 - l. agreement and correspondence with the Somerset Primary School trustees (question 50) (**item 12**), and
 - m. if not answered already, the justification for scores for specific study factors (questions 54-59) (**item 13**).
40. The Ministry Headquarters was justified to consider the remaining questions as not seeking access to records. Rather, these parts of the PATI request posed hypotheticals that were akin to a media enquiry seeking an opinion or further explanation. These were questions 4-6, 10, 11, 15-17, 21, 28, 30 and 62. Furthermore, other parts of the PATI request would have accounted for similar, underlying records, where they existed.
41. The Ministry Headquarters' submission emphasised that it had a clear understanding that the Applicant wanted access to any records held that related in any way to their list of questions. The Information Commissioner has no reason to doubt that the Ministry Headquarters' analysis was complete, relevant and accurate.

[2] The scope of the search that it decided to make on the basis of that analysis

42. Based on the Ministry Headquarters' submissions, it adequately planned a comprehensive search of locations that most likely would have held all records responsive to the PATI request.
43. This included the files of the then-Permanent Secretary, who had led the Location Strategy Team and would have been thoroughly familiar with the data sources and discussions being relied on in support of the December 2020 consultation proposal and the July 2021 school decision report.

44. Though the Ministry Headquarters did not retain any document to show the ICO the extent of its original search efforts, the Information Commissioner has no reason to doubt that its 2023 submissions fully described what its 2022 search had consisted of.
45. The only potential gap in the scope of the search appeared to be not searching the Minister's government email for any communication that perhaps had not been copied or forwarded to officers within the Ministry Headquarters. Although the Minister may have always copied in officers from the Ministry Headquarters on their emails, it would have been reasonable for the Ministry Headquarters to have included the Minister's email account as part of the scope of its search to confirm whether this had been the case. The Information Commissioner is of the view, however, that it would be disproportionate to now require, for instance, that the Ministry Headquarters identify all the Minister's replies to public consultation points that touched on non-physical factors. Most of these emails would have been captured by searches of the then-Permanent Secretary and other public officers' emails.

[3] The rigour and efficiency with which the search was then conducted

46. Overall, the Ministry Headquarters adopted a reasonably rigorous and efficient approach to their search for records responsive to items 1, 5, 6, 8 and 10-12. For the remaining items 2-4, 7, 9 and 13, however, the Ministry Headquarters' search documentation and submissions did not demonstrate a required sufficiency for the rigour and efficiency of its original search.
47. For all items, the Ministry Headquarters identified the appropriate individuals to conduct the search to ensure its efficiency, and included within its search records in different mediums, including both hard copy and electronic records.
48. For item 6, i.e., those parts of the PATI request about non-physical factors, the Information Commissioner is satisfied that other responsive records did not exist. The [consultation proposal](#), at pages 39 and 40, described why the original decision matrix had not weighed factors related to student achievement. The [school decision report](#), at pages 61 and 62, addressed the consultation point that history and legacy should have been a factor, that West End Primary School would have scored higher if history and legacy had been used, and that West End Primary School should not be closed because of its strong history and legacy. The [ministerial statement](#) of 10 December 2021, which the Ministry Headquarters shared with its internal review decision, made it clear that the December 2020 consultation proposal had focused on physical factors and the original scoring process was not revisited to weigh other factors and rescore the schools before reaching the July 2021 decision after the consultation period. As explained above, the

Information Commissioner is not required to assess whether a record should have existed as a matter of good governance or to assess the merits of a public authority's decision making.

49. Based on the public record about what the Ministry Headquarters had focused on to make its 2020 proposal and 2021 original decision, the Information Commissioner also finds no reason to doubt the Ministry Headquarters' position that no other responsive records existed for items 1, 8 and 10-12 in the PATI request. This included the Applicant's request for any budget projections for teacher salaries and any correspondence with the Somerset Primary School trustees. No additional steps or process for the search could have improved its rigour in a manner that resulted in records being located for these items.
50. For item 5, about new build costs, the Ministry Headquarters disclosed an excerpt from a document with a table entitled 'development costs', which defined relevant terms.¹³ Without further explanation, and since the Ministry Headquarters did not release records of relevant studies, it raised a question during this review of whether a cost study might have been contemplated, if not yet carried out at that point in its decision making.
51. The Information Commissioner notes that the disclosed record referred to 'traditional procurement' and '3P' (understood to mean 'public-private partnership') for the development works, which would likely mean that any 'new building' cost study would have involved private sector contractors. A disclosed record also revealed that, as of 17 November 2020, a building survey still needed to be done to address the study factor of 'existing layout conditions'. Further, while the Location Strategy Team had reviewed 3 years' worth of maintenance costs, the meeting note captured how the then-Permanent Secretary had expressed that money was not the Location Strategy Team's main focus.¹⁴ The Information Commissioner noted, however, that the school decision report explained why "the development of detailed cost estimates could not be undertaken until after decisions on primary schools were made" (page 29).
52. Based on the Ministry Headquarters' published information, the disclosed records and its submissions, the Information Commissioner accepts that the Ministry Headquarters' search for records responsive to item 5 had been sufficiently rigorous.

¹³ The Ministry Headquarters identified this disclosed record as responsive to the Applicant's 'supplemental questions – 5', which the ICO has categorised as part of item 7.

¹⁴ The Ministry Headquarters identified this disclosed record as responsive to the Applicant's 'supplemental questions A1', which the ICO has categorised as part of item 6.

53. In contrast, the Ministry Headquarters' decision and submissions did not show sufficient rigour and efficiency for its search for items 2-4, 7, 9 and 13. Specifically, the Ministry Headquarters did not address the existence of certain records, which the Information Commissioner expected to either exist or have been directly referred to as records no longer found or available, based on the Ministry Headquarters' public information. For example, the Ministry Headquarters' search did not locate or address:
- a. For items 3 and 4, any other record (e.g., another site plan) showing the total acreage of 4.63 for the Somerset Primary School site including the preschool, as was relied on. This was because the government's Somerset Primary School site plan gave a total acreage of 3.853 only and the Minister's email of 20 July 2021, which were amongst the disclosed records, made it clear that they relied on government's existing land surveys.
 - b. For items 2, 4, 7 and 13, any other record showing the scores made by each Location Strategy Team member for the Sandys parish schools, as relied on to tally the reported totals for all 19 study factors. This was because the consultation proposal described that each member submitted their own score (page 36).
 - c. For items 2, 4, 7 and 13, records of the data used for scoring Somerset Primary and West End Primary Schools in support of the 2015 School Reorganisation (SCORE) Advisory Committee's report, as relied on for the 2020 proposal, for factors 3.1 (building), 3.2 (safety), 3.3 (accessibility) and 4.1 (traffic). This was because the consultation proposal referred to the SCORE report as their source (page 39).
 - d. For item 9, any other record setting out the experience and/or value brought to the Location Strategy Team through their participation. Though the Ministry Headquarters disclosed two meeting notes that listed the job titles of the Location Strategy Team members, this did not address the other part of the PATI request that asked about their individual expertise. It also would be inconsistent with the Ministry Headquarters' practice of naming persons who have sat on recommendation-making committees; for instance, the 2015 SCORE Advisory Committee, the 2017 Ambassador Design Team as well as the 2021 History and Legacy Working Committee.¹⁵

¹⁵ See page 7 of the [Report of Findings and Recommendations](#) by the Ministry of Education's SCORE Advisory Committee (17 December 2015); page 34 of [Plan 2022: Bermuda's Strategic Plan for Public School Education](#) by the Department of Education (1 December 2017); and the [ministerial statement](#) announcing the History and Legacy Committee members (10 December 2021).

54. Further, for items 2, 4, 7 and 13, the Ministry Headquarters disclosed an excerpt of a table with column headings 'theme', 'what we heard', 'review, consideration and analysis' and 'notes'¹⁶ (but on the themes of 'transportation' and 'history and legacy' alone), as well as an excerpt entitled 'parish primary recommendation chart'¹⁷ with similar headings (but with information on 'history and legacy' alone). It was unclear why the Ministry Headquarters did not disclose the entire document on Sandys parish, as it appeared from these excerpts that the Ministry Headquarters did hold records that referred to some review, consideration and analysis of specific factors. But since the Ministry Headquarters did not date these records, it was unclear if these records related to the Location Strategy Team's decision making leading up to the 2020 proposal or leading up the 2021 decision as a result of the public consultation submissions.
55. In general, based on the fact that typed notes from strategy meetings in October-November 2020 were identified and disclosed to the Applicant, it seemed reasonable to further question whether the Location Strategy Team might have held other meetings, at least (perhaps) to collate their individual scores and finalise the assigned scores; and if so, additional meeting notes could have existed.

Conclusions

56. Based on the evidence available, the Information Commissioner is satisfied that the Ministry Headquarters was justified in relying on the administrative ground in section 16(1)(a) of the PATI Act to have refused (or further refused) items 1, 5, 6, 8 and 10-12 in the PATI request, but was not justified to have done so for items 2-4, 7, 9 and 13.

¹⁶ The Ministry Headquarters identified this record as responsive to the Applicant's 'supplemental questions F.2-3 and G', which the ICO has categorised as part of items 13 and 6.

¹⁷ The Ministry Headquarters identified this record as responsive to the Applicant's 'supplemental question G', which the ICO has categorised as part of item 6.

Decision

The Information Commissioner finds that the Ministry of Education Headquarters (**Ministry Headquarters**) was not justified, in part, in relying on section 16(1)(a) of the Public Access to Information (**PATI**) Act 2010 to administratively deny the request.

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

- affirms the part of the internal review decision administratively denying items 1, 5, 6, 8 and 10-12 in the PATI request under section 16(1)(a);
- annuls the part of the internal review decision administratively denying items 2-4, 7, 9 and 13; and,
- orders the Ministry Headquarters to conduct a reasonable search for items 2-4, 7, 9 and 13 as instructed in the confidential search instructions attached to the Information Commissioner's cover letter to the Ministry Headquarters, and to issue a new initial decision on any newly located records to the Applicant in accordance with the PATI Act and PATI Regulations 2014.

The Information Commissioner requires the Ministry Headquarters' compliance, as directed by this Decision and the accompanying Order, on or before **Friday, 9 February 2024**.

Judicial Review

The Applicant, the Ministry of Education Headquarters, 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

This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Ministry of Education Headquarters 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: 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;
 - ...

Public Access to Information Regulations 2014

Reasonable search

- 5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.
- (2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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