

## Decision Notice

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**Decision 16/2024: Ministry of Legal Affairs Headquarters**

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### **Legal aid records**

**Reference no: 2021021**

**Decision date: 1 May 2024**

## Summary

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The Applicant made a request under the Public Access to Information Act (**PATI**) 2010 to the Ministry of Legal Affairs Headquarters (**Ministry Headquarters**) for legal aid records. The Ministry Headquarters denied access to two responsive records under the exemptions in sections 26(1)(b) (breach of confidence) and 23(1) (personal information). It denied access to other parts of the request under the administrative grounds in section 16(1)(a) (records did not exist) and section 16(1)(c) (substantial and unreasonable interference or disruption). The Ministry Headquarters also relied on other provisions in the PATI Act to deny the request but abandoned its reliance on these provisions during the Information Commissioner's review.

The Information Commissioner has found that the Ministry Headquarters was justified in relying on section 16(1)(a) of the PATI Act to refuse items 1 and 5 of the PATI request, on section 16(1)(c) to refuse item 1, and on section 23(1) to deny access to record 2 and part of record 1. The Information Commissioner has further found that the remaining parts of record 1 were not exempt under sections 26(1)(b) or 23(1) of the PATI Act.

In accordance with section 48 of the PATI Act, the Information Commissioner has ordered the Ministry Headquarters to disclose part of record 1 on or before **Wednesday, 12 June 2024**.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 16(1)(a) (record does not exist), section 16(1)(c) (substantial and unreasonable interference or disruption), section 21 (public interest test), section 23 (personal information), section 24 (definition of personal information), section 26(1)(b) (breach of confidence).

Public Access to Information Regulations 2014: regulation 2 (interpretation), regulation 9 (unreasonable interference or disruption of other work).

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

## Background

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1. On or around 26 January 2023, the Applicant made a Public Access to Information (**PATI**) request to the Ministry of Legal Affairs Headquarters (**Ministry Headquarters**), asking for:
  - a. Total number of cases assigned to two specified counsel by the Legal Aid Committee (**Committee**) since 2018 (**item 1**).

- b. Total number of cases assigned to the two specified counsel where the client wrote to the Legal Aid Office (**LAO**) or the Committee to indicate that they did not feel comfortable with the representation of the aforementioned counsel (**item 2**).
  - c. Total number of cases assigned to the two specified counsel despite the client's indication as outlined in item 2 (**item 3**).
  - d. All sums paid to the specified counsel annually since 2018 (**item 4a**) with such disclosure including a breakdown of the types of cases (i.e. charges) (**item 4b**) and the Committee's rationale for indicating that counsel of the client was not suitable (**item 4c**).
  - e. Guidelines which the Committee use to determine the suitability of counsel to handle a particular case, with such disclosure including a breakdown of the guidelines relating to specific offences (**item 5**).
  - f. Telephone conversations between the Senior Legal Aid Counsel (**SLAC**) and a specified counsel before and after issuance of a specific letter to the counsel's law firm (**item 6**).
  - g. Telephone conversations and/or emails between the LAO Manager and legal aid applicants currently housed at the Westgate Correctional Facility, including but not limited to two specified individuals (**item 7**).
  - h. All sums approved by the Committee in relation to specified individuals (**item 8**).
  - i. All sums approved by the Committee in relation to a particular hearing before the Court of Appeal (**item 9**).
  - j. Any emails and/or telephone conversations between the SLAC and a specified counsel relating to a refusal of an application for legal aid coverage (**item 10**).
  - k. All Junior and/or Senior Counsel within the LAO since 2018 (**item 11**).
  - l. The LAO's contracts for the two counsel specified in item 1 since 2018 (**item 12**).
2. On 25 April 2023, the Ministry Headquarters issued an initial decision explaining that:
- a. It did not hold records responsive to items 1-3, 4b and 5 of the PATI request, effectively refusing these parts of the request under section 16(1)(a) (records did not exist).
  - b. The underlying information needed to create the records responsive to items 1 and 2 were stored in each individual client file and retrieving the information in these records would create a substantial and unreasonable disruption or interference

with its other work (section 16(1)(c)). In any event, the underlying information is exempt under legal professional privilege in section 35.

- c. It did not hold any records responsive to item 4a but noted that it was possible that the Accountant General's Department (**ACG**) might maintain a record of sums paid to individuals. The Ministry Headquarters informed the Applicant that it would transfer item 4a to the ACG.
  - d. As for item 4c, the Ministry Headquarters invoked the exemptions in sections 29 (deliberations of public authorities) and 35.
  - e. The disclosure of existence or non-existence of the records responsive to items 6-10 was not in the public interest, in accordance with section 38 of the PATI Act. The Ministry Headquarters explained that, if they exist or existed, the records are or would be exempt under the exemptions in sections 23(1) (personal information), 26 (information received in confidence) and 35.
  - f. It has provided the information responsive to item 11 in another PATI request filed by the Applicant. Nevertheless, the Ministry Headquarters provided the responsive information in the initial decision.
  - g. With regard to item 12, the Ministry Headquarters clarified that one of the two counsel never had a contract with the LAO and only has an employment contract with the Government as Legal Aid Counsel. The Ministry Headquarters provided information on the contract date, position title, PS grade, annual salary, probation period and termination notice. It also referred the Applicant to the Collective Bargaining Agreement (**CBA**) and the Conditions of Employment and Code of Conduct (**CECC**). Further, while there had been no contracts between the other counsel and the LAO since 2018, the Ministry Headquarters had a consultancy agreement with this specific consultant counsel which the Ministry Headquarters maintained contained a confidentiality clause prohibiting disclosure of the nature and terms of the agreement to the public. The Ministry Headquarters thus effectively refused access to this specific contract under the exemption in section 26(1)(b) (breach of contract) of the PATI Act.
3. The Applicant asked for an internal review which resulted in the Ministry Headquarters' internal review decision on 30 June 2023. The internal review decision upheld the Ministry Headquarters' initial decision on items 1-3, 4b, 4c and 5-12 of the PATI request. The internal review decision reversed the initial decision on item 4a asking for all sums paid to a specific counsel and directed that the information should be released to the

Applicant by 10 July 2023. The Applicant did not receive the disclosure responsive to item 4a by the said date.

4. On 12 July 2023, the Applicant made a timely application for an independent review by the Information Commissioner, challenging the Ministry Headquarters' internal review decision. The Applicant highlighted that, despite the internal review decision, they had not received "the contract involving" the specified counsel.

## Investigation

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5. The Ministry Headquarters and the Applicant engaged in further correspondence in July 2023 after the Applicant applied for an independent review by the Information Commissioner. The Ministry Headquarters provided further information in relation to the nature of its relationship with the consultant counsel specified in item 4a and that the amounts paid to this consultant counsel had been published in the Official Gazette. In response, the Applicant emphasised that they sought a copy of the actual consultancy contract.
6. The Information Commissioner's Office (**ICO**) accepted the application as valid on 2 August 2023 on the basis that the Applicant had made a PATI request to a public authority and had asked that public authority for an internal review. Between August and early September 2023, the ICO engaged with the parties to clarify the issues under review.
7. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application, because the records and the Ministry Headquarters' submissions were required.
8. The ICO notified the Ministry Headquarters of the valid application on 7 September 2023 and asked for the responsive records. On 30 November 2023, the Ministry Headquarters provided the ICO with two records responsive to item 12 of the PATI request. The first record was a consultant service agreement with one of the specified counsel (**record 1**), while the second was an employment contract related to the other counsel (**record 2**). The Ministry Headquarters also informed the ICO that the records responsive to item 4c of the PATI request did not exist.
9. Later during the review, the Ministry Headquarters also provided the Applicant with additional information in relation to items 4a and 11 of the PATI request.
10. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority and the applicant a reasonable opportunity to make representations. The

Ministry Headquarters, the Applicant and one of the counsel specified in items 1-4 and 12, as a Third Party, were invited to make submissions. The ICO received submissions from the Ministry Headquarters and the Applicant, but not the Third Party. With the Ministry Headquarters' agreement, the ICO also treated the notes from its meeting with the Ministry Headquarters as part of its submissions.

11. Following discussions with the ICO, on 1 April 2024, the Applicant furthered narrowed this review by informing the ICO that they no longer wished to challenge the Ministry Headquarters' responses to items 2-4 and 6-11 of the PATI request. The Applicant also confirmed that, with respect to item 1, they would like to challenge the Ministry Headquarters' decision to deny access to records from 2021 and 2022 only. This review therefore considers the Ministry Headquarters' internal review decision on items 1, 5 and 12 only. The parties were informed of the revised issues under review.

### **Information Commissioner's analysis and findings**

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12. The Information Commissioner has considered all relevant submissions, or parts of submissions, made by the parties. She is satisfied that no matter of relevance has been overlooked.
13. The Information Commissioner strives to provide as full a public explanation of her reasoning and Decision as possible. Section 53(2) of the PATI Act, however, prevents discussion of the withheld records. As a result, the analysis below cannot be as detailed as would otherwise be preferred.

#### ***Record does not exist – section 16(1)(a)***

14. 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.
15. 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.
16. 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.

17. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following<sup>1</sup>:

[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.

18. The specific circumstances in each case will inform the Information Commissioner's assessment.

19. 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.<sup>2</sup>

#### *Public authority's submissions*

20. The Ministry Headquarters maintained that the statistical record responsive to item 1 as well as the written guidelines responsive to item 5 did not exist.

#### Item 1

21. The Ministry Headquarters explained that, to provide the statistical record responsive to item 1, the LAO as part of the Ministry Headquarters would have had to create a new set of records. It emphasised that the LAO provides services to clients and therefore its records are client-based. Its initial decision explained that correspondence from clients is maintained and stored within each client's working or administrative files.

22. The Ministry Headquarters emphasised that it is responsible for the proper administration of individual client files. The Committee's functions are to determine who should be granted legal aid assistance based on the statutory criteria in the Legal Aid Act 1980 (**Legal Aid Act**), assign in-house Legal Aid Counsel to represent the client and, in exceptional circumstances—if it is not possible to assign in-house counsel for reasons set

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<sup>1</sup> See most recently [Decision 06/2024](#), [Ministry of Youth, Social Development & Seniors](#), paragraph 17.

<sup>2</sup> See [Decision 04/2017](#), [Department of Health](#), at paragraphs 37-49 and more recently [Decision 06/2024](#), [Ministry of Youth, Social Development & Seniors](#), paragraph 19.

out in section 12(2) of the Legal Aid Act—to assign an external counsel with suitable experience and skill.

23. The Ministry Headquarters submitted that there is no business need for the LAO to keep track of which counsel are assigned to how many clients over any given time period. The LAO is not responsible for the collection and management of data related to counsel and their assignments. It is not part of the Committee’s functions to ensure, for example, there is a fair distribution of files between counsel on the legal aid roster or to track how many cases they have assigned to any individual counsel. There is no obligation set out in the Legal Aid Act to assign work to any of the counsel whose names appear on the roster.

#### Item 5

24. Before relying on section 16(1)(a) to administratively deny item 5, the Ministry Headquarters confirmed with the SLAC that the LAO’s only written policy document is a document that was drafted by the Committee several years ago and is publicly available online at the Bermuda Bar Association Website.<sup>3</sup> The Ministry Headquarters submitted a copy of the said policy, which it accepted did not address the factors that the Committee has to take into account when assigning external counsel.
25. The Ministry Headquarters explained that the only provisions related to counsel assignment are the mandatory provisions set out in the Legal Aid Act, particularly section 12. As per section 5A of the Legal Aid Act, the Minister (Attorney-General) could potentially issue guidelines to the Committee, over and above that directed in the statute. But the Minister has not issued any policy directions or guidance to the Committee on the performance of its functions and, in particular, has not issued any guidance regarding the factors for the Committee’s consideration when determining counsel’s suitability for a particular case. Given the composition of the Committee (a member or former member of the judiciary, two lawyers, an accountant and a social worker or former social worker) assisted by the SLAC, the Ministry Headquarters submitted that it appears to have been contemplated by Parliament that the Committee would have sufficient and relevant experience to perform their function.
26. During its meeting with the ICO, the Ministry Headquarters advised that the LAO has recently compiled and drafted a comprehensive policy on counsel assignment, and minimum experience requirements for counsel based on the type and seriousness of the matter and other factors. The document was still in a draft form and will first have to be

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<sup>3</sup> Legal Aid Office, ‘[Policies and Guidelines of the Legal Aid Committee](#)’.



reviewed by the relevant Minister. The Ministry Headquarters emphasised that, even once the policy is issued, decisions about counsel assignments will still likely be subject to the Committee's discretion, for practical reasons. For example, due to the limited number of very experienced criminal lawyers on island.

27. The Ministry Headquarters submitted that that the response it provided to the Applicant was accurate and was as helpful as possible. The Applicant was provided with information that was publicly available in the LAO's Annual Report on how the Committee has performed its functions over the years. The Applicant's attention was also brought to section 12 of the Legal Aid Act.

#### *Applicant's submissions*

28. The Applicant challenged the Ministry Headquarters' response to item 5 and revised item 1.

#### *Discussion*

29. The Information Commissioner considers the Ministry Headquarters' reliance on section 16(1)(a) to administratively deny items 1 and 5 of the PATI request.

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

30. The Ministry Headquarters' initial decision and submissions to the ICO show its adequate understanding of item 1 of the PATI request. It understood that the Applicant was seeking statistical information on cases assigned to two specific counsel. As explained in the discussion on section 16(1)(c) below, the Ministry Headquarters even considered another possible reading of item 1, namely, a request for the underlying records or the raw information for the relevant statistical information.

31. The Ministry Headquarters' responses to the Applicant and the ICO also show its adequate analysis of item 5 of the PATI request. The Ministry Headquarters informed the Applicant that there were no written guidelines on counsel assignment. But the Ministry Headquarters directed the Applicant to section 12 of the Legal Aid Act and a relevant part of the LAO's 2013-2019 Annual Report, as it correctly understood item 5 as also asking for any documents that set out the factors that the Committee has to consider when determining the "suitability of counsel to handle a particular case".

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

32. The scope of the search that the Ministry Headquarters decided to make on the basis of its analysis on the scope of item 5 and revised item 1 was adequate. It checked and

confirmed with the SLAC that the LAO, as a matter of practice, did not hold the requested statistical record or have a written policy on counsel assignment.

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

33. Given the SLAC is the most senior officer within the LAO and has deep knowledge of the LAO's work and its records, the Information Commissioner is satisfied that the step taken by the Ministry Headquarters to confirm the non-existence of the records responsive to items 1 and 5 was adequate.

*Conclusion*

34. The Information Commissioner is satisfied that the Ministry Headquarters was justified in relying on section 16(1)(a) of the PATI Act to refuse items 1 and 5 of the PATI request.

***Substantial and unreasonable interference or disruption – section 16(1)(c)***

35. Public authorities are entitled under section 16(1)(c) to administratively deny a PATI request if, in the opinion the head of the public authority, granting the request would cause a substantial and unreasonable interference with or disruption of the other work of the public authority.

36. As set out in section 16(1)(c), the interference or disruption must be due to:

- a. the volume of records that would need to be retrieved and examined, or
- b. the nature of the records that would need to be examined, or
- c. both.

37. In accordance with section 16(2), a public authority must assist or offer to assist the requester to narrow the request before relying on the administrative denial in section 16(1)(c). Regulation 9(1) of the PATI Regulations 2014 (**PATI Regulations**) explains in further detail what steps a public authority must take to assist a requester:

[T]he information officer shall send written communication to the applicant—

- a. explaining how the request is likely to cause a substantial and unreasonable interference with or disruption of other work; and
- b. inviting consultation with a view to narrowing the request.

38. Together, section 16(2) and regulation 9(1) require the public authority to explain its reasons and supporting facts to the requester. It is not enough for a public authority to

simply cite section 16(1)(c) and ask the requester to narrow the request. The explanation must allow a requester a meaningful opportunity to consult with the public authority to amend the request. On the one hand, a public authority has knowledge of its records, records management practices, and resources. Along with its obligations under the duty to assist in section 12(2)(a) of the PATI Act, this makes a public authority better placed than the requester to offer practical suggestions on how to amend the request. On the other hand, the requester is often best positioned to offer suggestions for focusing a request to retrieve the information they wish to know.

39. The nature and amount of assistance required by section 16(2) may also vary significantly from case to case. It will depend upon the particular facts and circumstances of the request, including the willingness of the parties to engage in a meaningful discussion.
40. In most cases, the first step the public authority must take to meet the requirements of section 16(2) and regulation 9(1) is to retrieve, or attempt to retrieve, the responsive records. This allow the public authority to explain the necessary details to the requester, which may include: the estimated volume of the records, the complex nature of the information in the records, the potential locations in which the records are stored or filed and the relevant filing system, the steps that would be required to identify, locate, retrieve and examine the records, the estimated length of time and personnel required to process the records, whether any records or parts of records can be released without causing a substantial and unreasonable burden, and the size, staffing and work of the public authority.
41. For section 16(1)(c) to apply, the interference or disruption to the public authority's other work must be both substantial and unreasonable. The ordinary meaning of 'substantial' is 'of considerable importance, size or worth'.<sup>4</sup> The fact that processing a PATI request is burdensome, frustrating or causes inconvenience is not sufficient. The interference or disruption must be of significant, considerable impact upon a public authority's work.
42. Determining whether the interference or disruption is 'unreasonable' requires the public authority to consider whether, in light of objective factors, responding to the PATI request would be 'beyond the limits of acceptability or fairness'.<sup>5</sup> In considering unreasonableness, the fairness of the burden on the public authority must be viewed in light of the purposes of the PATI Act in section 2: to give the public the right to access to information held by public authorities to the greatest extent possible, subject to the exemptions within the Act; to increase transparency and eliminate unnecessary secrecy;

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<sup>4</sup> Oxford Dictionary of English (3<sup>rd</sup> ed. 2010).

<sup>5</sup> Oxford Dictionary of English (3<sup>rd</sup> ed. 2010).

to increase the accountability of public authorities; and to inform the public about the activities of public authorities.

43. When evaluating unreasonableness, regulation 9(2)(b) further identifies the types of factors that a public authority must consider, including its nature and size; the number, type and volume of responsive records; and time involved to fully process the request.
44. The full processing of a request requires a public authority to:
  - a. Identify, locate, and retrieve the records within its filing system;
  - b. Examine the records to decide whether to grant or refuse access, including consulting with any persons or bodies, copying records, and redacting records;
  - c. Notify the requester of interim or final decisions; and
  - d. Attend to any other required matters.
45. Regulation 9(2) explains that when determining the resources and time it will take to process the request, a public authority should consider its existing resources, consistent with its attendance to its other work.
46. In sum, in determining whether a public authority's reliance on section 16(1)(c) was justified, the Information Commissioner takes into account the following<sup>6</sup>:
  - [1] Did the public authority assist, or offer to assist, the PATI requester with amending the request?
  - [2] Would fully processing the request cause a substantial and unreasonable interference or disruption to the public authority's other work?
47. The specific circumstances in each case will inform the Information Commissioner's assessment.
48. Finally, the public authority bears the burden to establish, on the balance of probabilities, that its reliance on section 16(1)(c) was justified.

*Public authority's submissions*

49. In its submission, the Ministry Headquarters acknowledged that it did not offer to assist the Applicant to amend item 1 of the request, as required by section 16(2) of the PATI Act.

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<sup>6</sup> See [Decision 03/2018](#), [Department of Health](#).

50. In its initial decision, the Ministry Headquarters explained that an administrative assistant and/or a paralegal experienced and familiar with the LAO files, would have to retrieve and review approximately 1200 client files to locate the underlying information and create the records being sought. It was estimated that it would take at least six to nine months, perhaps longer, to create the type of records originally being requested in the PATI Act.
51. The Ministry Headquarters was informed that the Applicant narrowed their challenge to the denial only of records from 2021 and 2022 for item 1. In response, the Ministry Headquarters submitted that the LAO would still have to retrieve and examine 371 client files. Although item 1 was narrowed to 2021 and 2022 records, the LAO would still have to retrieve and examine files from 2020 as well because the two specified counsel may have been initially assigned a case during that year, but the work continued in 2021 or 2022.
52. The Ministry Headquarters explained that legal aid certificates were often assigned by the Committee generically to in-house counsel. The cases were then assigned during weekly meetings between the SLAC and in-house counsel. Given this, the LAO would also have to retrieve and examine an additional 78 case management records from 14 June 2021 to 31 December 2022 in relation to files assigned to one of the specified counsel, who was later hired as Legal Aid Counsel by the LAO.
53. The Ministry Headquarters further explained that extracting and providing copies of the legal aid certificates from each individual client file alone would not be sufficient. In addition to the fact that the certificates often only referred to “Legal Aid Counsel” generically and not mentioning the names of the specific counsel, the cases often got reassigned or transferred to another counsel (either internal or external). Reassignment and transfer of cases could also happen a number of times.
54. Because the client files contained legally privileged information, the Ministry Headquarters explained that the file review could have only been done by someone within the LAO. The LAO would not be able to receive assistance from the Ministry Headquarters, who often appears for government departments, the police service and other parties that are often against the interests of the LAO’s clients.
55. The Ministry Headquarters submitted that, at the time of the request, the LAO consisted of an office manager, a temporary receptionist, an accounts officer, a paralegal, the SLAC, and two legal aid counsels – one of which started their employment on 1 February 2023. The LAO was a very small office and did not have the administrative and legal staff that would be required to review all files, in all practice areas, over a substantial period. The

Ministry Headquarters submitted that creating new statistical records for the sole purpose of satisfying item 1 would substantially and unreasonably interfere with the LAO's work.

56. The Ministry Headquarters submitted that the LAO had a very limited budget and used all of it to assist vulnerable, homeless, mentally ill, impoverished and otherwise marginalised individuals in the community to be able to access justice and have a voice before the courts. The staff at the LAO already work extra hours to meet their core duties, often for no extra remuneration.

*Applicant's submissions*

57. The Applicant challenged the Ministry Headquarters' reliance on section 16(1)(c) for records from 2021 and 2022 responsive to item 1 of the PATI request. The Applicant explained that these records should show that the majority of the applications received by the LAO for criminal cases were assigned to the two specified counsel, even though there were other counsel in the legal aid roster who practiced criminal law.

*Discussion*

58. The Information Commissioner considers the Ministry Headquarters' reliance on section 16(1)(c) to administratively deny access to records from 2021 and 2022 responsive to item 1 of the PATI request.

[1] Did the public authority assist, or offer to assist, the PATI requester with amending the request?

59. The Ministry Headquarters conceded that it did not assist or offer to assist the Applicant, who was the PATI requester, with amending item 1 of the request. Because the Ministry Headquarters did not meet this requirement set out in section 16(2), its reliance on section 16(1)(c) was not justified. But since the Applicant decided to pursue a more narrowed scope of item 1 during this review, this Decision considers the Ministry Headquarters' reliance on the administrative ground.

[2] Would fully processing the request have caused a substantial and unreasonable interference or disruption to the public authority's other work?

60. The LAO maintained the relevant 371 client files in hard copy form only. It is unclear whether the 78 case management records were held in hard or electronic copy. Given the hard copy form of most of the records, the manner in which they were filed, and the number of files that need to be retrieved, the Information Commissioner accepts that the retrieval and examination of the relevant records would have been time consuming

and would have required efforts by the LAO on behalf of the Ministry Headquarters. She also accepts that the retrieval and examination of the responsive records would have caused some interference or disruption of the LAO's other work. But the relevant question under section 16(1)(c) of the PATI Act is whether such interference or disruption would have been both substantial and unreasonable.

61. The Ministry Headquarters submitted that it would take the LAO at least 6-9 months to retrieve and examine 1200 individual client files. As each month equals to approximately 151 working hours, this means it would have taken the LAO between 906-1359 working hours to retrieve and examine the 1200 client files. This translates to approximately 45 minutes to an hour for the LAO to retrieve and review each client file. Since the Applicant is now only challenging the records from 2021 and 2022 only, there would have been 371 files which the LAO would have had to review, and this would take about 278-371 working hours or 1.8-2.45 months. This calculation has not included the 78 case management records.
62. The Information Commissioner accepts that an estimate of 45 minutes to an hour to review each individual client file was reasonable, given the content of each file would depend on the unique circumstances of the matter. Even if it took only 15 minutes for each file, it would still require about 148 working hours continuously, or almost a month, for the LAO to retrieve the relevant information responsive to one of the 12 items in the PATI request. Given this, the Information Commissioner accepts that the tasks of retrieving the relevant records from each file and examining them would rise to a level of substantial disruption or interference to the LAO's other work.
63. Such disruption or interference would not only be substantial but also unreasonable. While the Ministry Headquarters is the public authority whose internal review decision is considered in this review, due to the privileged nature of the files the Information Commissioner can only take into account the nature and size of the LAO. The Information Commissioner accepts that at around the time of the request, the LAO only had seven staff, none of whom had the sole responsibility of responding to PATI requests.
64. The Applicant alleged that disclosure of the records responsive to item 1 could potentially show that the majority of the criminal cases handled by the LAO were assigned to the specified counsel, even though there were other counsel in the legal aid roster who practiced the same area of law. Item 1 of the PATI request thus appears to be prompted by the Applicant's interest in ensuring that the assignment of counsel by the LAO was done fairly, in that it did not favour a particular counsel and that it gives opportunities to other counsel. With this in mind, it can be understood why, from the Applicant's perspective, there was a business need for the LAO to keep track of the

number of assignments made to counsel. But the LAO's submission that it did not have the business need to do so is, in the Information Commissioner's view, reasonable. This is particularly because, since March 2019, the Committee started primarily assigning cases to Legal Aid Counsel, in accordance with the requirement of the Legal Aid Act.<sup>7</sup> While the Applicant emphasises the fairness of equitable distribution of work to a larger pool of counsel, the LAO is focused on the requirements of its mandate under the Legal Aid Act.

65. Given its statutory responsibility and limited resources, the LAO's decision not to keep track of the counsel assignment numbers or to prioritise this task is understandable. While disclosure of the responsive records might assist the public with understanding the distribution of counsel assignments or allowing it to assess the fairness of counsel assignments (as defined by the Applicant), this is not the LAO's statutory focus under the Legal Aid Act.

#### *Conclusion*

66. Because it did not meet the requirement to assist the requester in section 16(2), the Ministry Headquarters was not justified in relying on section 16(1)(c) of the PATI Act to have refused item 1 of the PATI request. During this review, however, the Ministry Headquarters remedied this by engaging with the ICO and the Applicant to afford the Applicant an opportunity to narrow the request. The Information Commissioner concludes, however, that the full processing of the narrowed item 1 would still cause substantial and unreasonable interference with or disruption to the Ministry Headquarters' other work. For this reason, the Ministry Headquarters is not required to take further actions in relation to the narrowed item 1 of the PATI request.

#### ***Breach of confidence – section 26(1)(b)***

67. A public authority may rely on section 26(1)(b) as justification for denying or objecting to access to a public record if the record's disclosure would constitute a breach of a duty of confidence arising under any provision of law.
68. In accordance with the Interpretation Act 1951, 'any provision of law' means "any provision of law which has the effect for the time being in Bermuda, including any

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<sup>7</sup> Section 12(1) of the Legal Aid Act reads: "Subject to subsection (2), whenever a certificate is granted by the Committee, the Committee shall direct the Senior Legal Aid Counsel to assign Legal Aid Counsel to the assisted person" (emphasis added). Under subsection (2), external counsel can only be assigned if the assignment of Legal Aid Counsel is not practical, not appropriate to the nature of the proceedings for which the certificate is granted, or might give rise to a conflict of interest. The current section 12 of the Legal Aid Act came into effect on 1 March 2019, following the amendment to the Legal Aid Act in 2018.



statutory provision, any provision of the common law, any provision of the Constitution, and any right or power which may be exercised by virtue of the Royal Prerogative". A duty of confidence may be created by a provision of an agreement or may arise in equity.

69. A party asserting a duty of confidence arising from agreement must show that the records would fall within the scope of the relevant confidentiality or non-disclosure clause.
70. A breach of an equitable duty of confidence requires showing that:
  - a. the information has the necessary quality of confidence;
  - b. it was given in circumstances which create an obligation that the information be kept confidential; and
  - c. there must have been an unauthorised use of the information, which in some circumstances must be to the detriment of the confider.
71. Section 26(1)(b) also requires that the disclosure 'would' constitute a breach of confidence. 'Would' means that there is a high probability that the anticipated harm can occur. It has also been described as a significant and weighty chance of the harm occurring.
72. The exemption in section 26(1)(b) is subject to the public interest test. 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.
73. In sum, a public authority or third party seeking to rely on the exemption under section 26(1)(b) for a breach of a duty of confidence must ask<sup>8</sup>:
  - [1] Did a duty of confidence arise under the law?
  - [2] Would disclosure have constituted a breach of that duty of confidence under the law?
  - [3] If the exemption was engaged, whether the balance of the public interest required disclosure?
74. A public authority bears the burden of showing to the Information Commissioner that, on the balance of probabilities, its reliance on the exemption is justified.

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<sup>8</sup> See [Decisions 46/2023 and 47/2023](#), [Cabinet Office](#), paragraph 183.

*Public authority's submissions*

75. The Ministry Headquarters relied on this exemption to withhold record 1 responsive to item 12 of the PATI request. Record 1 was a service agreement between one of the counsel specified in item 12 of the request and the Ministry Headquarters.
76. The Ministry Headquarters referred to one of the provisions in record 1 itself as the primary source of the duty of confidence. The Ministry Headquarters asserted that the provision created a two-way duty of confidence, in that the specified counsel and the Ministry Headquarters as the parties to the agreement owed a duty of confidence to each other. The Ministry Headquarters, on behalf of the Government, entered into a contract which specifically holds the specified counsel civilly liable for disclosing any information or data, including the contract itself. The Ministry Headquarters submitted that the courts have held that where a confidentiality clause is included in a contract, the party who agrees to keep the information confidential is likewise entitled to reasonably expect and rely on the other party who included the clause to keep it confidential. The Ministry Headquarters submitted that, otherwise, the clause would serve no purpose.
77. The Ministry Headquarters accepted that the PATI Act was part of the law of Bermuda at the time record 1 was signed and, in general, is meant to provide for robust disclosure to the public of records held by the Government where, on balance, the public interest would be best served by disclosure. The objective of the scheme is to provide the public with as much access to information held by public authorities as possible. Nevertheless, contractual obligations may still be enforceable by the parties and damages claimed in appropriate cases. The Ministry Headquarters referred to a "conflict of laws" provision in the service agreement.
78. The Ministry Headquarters highlighted the importance of balancing the public interest and individual rights, referring to section 2 of the PATI Act which set out the purpose of the PATI Act. If the purpose of giving the public the right to obtain access to information is given the broadest and most literal interpretation, with no regard for privacy interests or rights of the individual or the reasonable reliance by the parties on the terms of the contract, a copy of every contract of employment of every government employee and contractor would be subject to public disclosure pursuant to section 24(2)(b). The Ministry Headquarters questioned if that would be a proper balance between the right of the public access to information and the right to privacy of individuals.
79. In the absence of the definition of "public interest" in the PATI Act, the Ministry Headquarters understood it as generally referring to the welfare and general well-being of society as a whole, but it also includes the protection of individual rights and privacy.

It submitted that it is fundamental to the public interest that a balance between individual and collective rights is maintained.

80. In weighing the competing interests, the Ministry Headquarters accepted that the public should clearly have access to information relevant to the Government's expenditure of funds for employees and consultants hired by each department and to assess whether the Government has prudently spent funds for these purposes. But providing printed copies of an individual contract to a third party requester to use as they see fit does not strike the proper balance between public access to information and the protection of the rights of others.
81. The Ministry Headquarters referred to the UK Information Tribunal decision in *Bousfield v Information Commissioner et al* [2012] UKFTT (EA/2011/0212) which summarised the Information Commissioner's [decision](#) that:

[e]ven though the public had a legitimate interest in knowing how much money a public body was spending on compromise agreements, coupled with the requirements of transparency and accountability, a balance had to be struck between those interests and a duty to respect an employee's right to privacy. Here, however, there was only one agreement and one individual. In the circumstances, the expectations of confidentiality outweighed any public interest in transparency and accountability.
82. The Ministry Headquarters highlighted that the name of the individual who was performing services under the contract, the essential terms of the contract, and the remuneration paid under the contract were already published on the Gazette Notice and the Applicant has been provided with the URL to the same. The Ministry Headquarters submitted that the Gazette Notice publication has met the public interest in holding the Government accountable for the contract without prejudicing the individual's rights to confidentiality and privacy.
83. The Ministry Headquarters confirmed that the Gazette Notice has already set out the proper timeframe within which the consultant counsel contracted with the Ministry Headquarters to provide consultant services.
84. The Ministry Headquarters submitted that there was no public interest in disclosing a copy of the consultancy contract or record 1 in full, which would include signatures, mobile phone numbers, and details of individuals. The consultant counsel as the relevant individual would have a reasonable expectation of privacy in relation to these personal details. Disclosure would be contrary to their safety and privacy rights, and therefore not in the public interest.

*Applicant's submissions*

85. The Applicant submitted that they have not received the service agreement or record 1, even though the Ministry Headquarters' internal review decision stated that the same would be disclosed.
86. The Applicant explained that a copy of the service agreement was requested so they could identify the contractual terms and conditions for the purposes of identifying if there was a conflict of interest, given that the specified counsel (along with the other counsel referred to in item 12) was operating their own law firm during the consultancy period. For this request, the Applicant submitted that the public interest in disclosure was significantly high. The Applicant submitted that the request for this specific record should be considered in the context of the entire request, particularly item 4a which sought the total sums paid to the relevant counsel.

*Third party's submissions*

87. The Third Party did not make submissions.

*Discussion*

88. The Information Commissioner considers the Ministry Headquarters' reliance on section 26(1)(b) for record 1 only.

[1] Did a duty of confidence arise under the law?

89. Having carefully examined the relevant provision in the service agreement, the Information Commissioner is not satisfied that a duty of confidence arose under the same. The express language of the provision showed that the duty of confidence was owed by the counsel to the Ministry Headquarters or the Government, and not the other way round. In the absence of further explanation and supporting argument from the Ministry Headquarters, the Information Commissioner also disagrees that it would have been reasonable for the counsel to expect the Ministry Headquarters to also keep the service agreement confidential. As the agreement was executed after the PATI Act came into effect, the Ministry Headquarters should have had an expectation that certain information in it might be subject to public disclosure.
90. Further, the fact that the start and end dates of the agreement, description of services and contract value were published by the Ministry Headquarters on the Gazette Notice in accordance with section 6(6) of the PATI Act supports the conclusion that the duty of confidence in the service agreement was not owed by the Ministry Headquarters or the Government to the counsel.

91. The Information Commissioner is not satisfied that a duty of confidence on the Ministry Headquarters arose under the relevant service agreement. The Ministry Headquarters claimed that the relevant provision in the agreement was the “primary source” of the duty of confidence, but it had not identified another source of duty. Because no duty of confidence arose in this case, the Information Commissioner does not consider the Ministry Headquarters’ reliance on section 26(1)(b) further.

*Conclusion*

92. The Information Commissioner is not satisfied that the Ministry Headquarters was justified in relying on section 26(1)(b) to withhold record 1.

***Personal information – section 23(1)***

93. Under section 23(1) of the PATI Act, public authorities may deny public access to records or parts of records which consist of personal information. Section 24(1) broadly defines ‘personal information’ as information recorded in any form about an identifiable individual.
94. Certain information about identifiable individuals is excluded from the definition of ‘personal information’ in the PATI Act, in accordance with section 24(2). For example, section 24(2)(a) excludes information that relates to the position or functions of an individual who is or was a public officer. Further, section 24(2)(b) excludes certain information about contractors performing services for a public authority (including the terms of the contract and name of the individual).
95. The exemption in section 23(1) also does not apply to the limited circumstances set out in subsection (2). It does not apply, for example, if the information in the requested records relates to the PATI requester (see subsection (2)(a)).
96. The personal information exemption is subject to the public interest test. Records which are found to be exempt under section 23(1) would still have to be disclosed, if the public interest would, on balance, be better served by disclosure instead of non-disclosure. In considering the public interest test for disclosure of personal information, the following factors have to be taken into consideration<sup>9</sup>:
- a. Whether disclosure will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations.

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<sup>9</sup> [Decision 02/2019](#), [Office of the Governor](#), paragraph 51.

- b. Whether disclosure would be fair to the individual under all of the circumstances. Evaluating the fairness of any disclosure may include consideration of the following:
  - i. Whether sensitive personal information was involved?
  - ii. What would be the consequences upon the individual of disclosure?
  - iii. What are the reasonable expectations of privacy of a person in the individual's position?
- c. Whether disclosure of the personal information is necessary to further the public interests that have been identified.

97. In sum, as the Information Commissioner explained in [Decision 02/2019, Office of the Governor](#), public authorities must consider the following questions before denying public access to records under the personal information exemption<sup>10</sup>:

[1] Whether the records consisted of information about an identifiable individual?

[2] Whether the information fell 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) applied to the records?

[4] If the exemption for personal information in section 23(1) was engaged, whether the balance of the public interest required disclosure?

98. Given the importance of the protection of personal information and privacy, particularly in a small jurisdiction such as Bermuda, the Information Commissioner may consider the personal information exemption on her own accord and without the provision being relied upon by any of the parties.

*Public authority's submissions*

99. The Ministry Headquarters relied on the same arguments described in paragraphs 78-81 to justify the non-disclosure of the employment contract of one of the counsel specified in item 12 of the PATI request, and which was marked as record 2.

100. In its initial decision, the Ministry Headquarters clarified that the relevant counsel has never had a contract with the LAO. The only contract that the Ministry Headquarters held at the time of the PATI request was the counsel's employment contract with the

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<sup>10</sup> [Decision 02/2019, Office of the Governor](#), paragraph 56.

Government, considered as record 2 in this review. The Ministry Headquarters already provided the Applicant with details of the contract, including its effective date, position title, PS grade, annual salary, as well as probation and termination periods at the initial decision stage. The Applicant was also advised that the other terms were set out in the CBA and the CECC, which were both available in the public domain. The only other information in the contract was personal information that did not fall within the exclusions in section 24(2) of the PATI Act.

101. The Ministry Headquarters referred to the definition of personal information in section 24(1) and the exclusion to the definition in section 24(2)(a). While the relevant counsel was employed by a public authority as a regular, full-time employee, record 2 was unrelated to their position or functions. The information in it thus falls within the definition of personal information in section 24(1) and is therefore exempt under section 23(1).
102. The Ministry Headquarters further asserted that the exclusion to the definition of personal information in section 24(2)(b) did not apply either. The Ministry Headquarters argued that this provision was applicable to information of an individual performing services under contract with a public authority only. It was intended to ensure the public had access to contracts between the Government, third parties, and third-party businesses, and not to every regular contract of employment of every Government employee.
103. The Ministry Headquarters opined that disclosure of government employment contracts was not in the public interest and speculated about the warning that would need to be given to all government employees and potential government employees if the public were permitted to inspect any public officer's employment contract.
104. After weighing the competing interests, the Ministry Headquarters concluded that it would not be in the public interest to disclose all government employment contracts thereby permitting the wholesale intrusion into individuals' rights to privacy by essentially giving away each employee's human resource file for the public's perusal. The Ministry Headquarters accepted that the public should clearly have access to information relevant to the Government's expenditure of funds for employees hired by each department to assess whether the Government has prudently spent funds for these purposes. But, in the Ministry Headquarters' view, providing printed copies of an individual employment contract to a third party requester to use as they see fit does not strike the proper balance between public access to information and the protection of rights of others.

105. The Ministry Headquarters submitted that the Government has always made available to the public the nature of all government posts and the salaries paid to all employees holding those posts. It believed that this was all the information that need to be disclosed in the public interest. Different considerations might apply if the Government contracts with a third party to build a bridge expending 10 million dollars of public funds. In that case, the public would have a keen interest in exactly who was doing the work and what standard of work was required by the contract.
106. The Ministry Headquarters requested that, if the Information Commissioner decides that the counsel's actual employment contract should be disclosed to the public, any personal information that could be used to do harm or mischief to the relevant individual, such as date of birth, home address, phone number, social insurance number and signatures, must be redacted prior to disclosure.

*Applicant's submissions*

107. The Applicant emphasised that record 2 was a contract for a public officer in a very important senior position with outward facing accountability. The Applicant accepted that the relevant individual's name, address and other identifying information could be redacted.
108. The Applicant submitted that there was a potential conflict between the counsel's duty as a public officer and their duty as counsel who should act for the client's best interest. As an example, as a counsel acting for the interest of their client, they may take a view that retaining a certain expert would assist the client's defence. However, as a public officer they also have a duty in relation to the responsible use of public funds. The Applicant submitted that disclosure of the employment contract was necessary, because it might have a term on conflict management, which explains what should happen in the event the described or similar conflict arises.
109. The Applicant also relied on the argument summarised in paragraph 86 above.

*Discussion*

110. The Information Commissioner considers the Ministry Headquarters' reliance on section 23(1) to withhold record 2. She also invoked section 23(1) on her own accord for record 1.

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

111. Both records 1 and 2 consisted of information about individuals, mainly two counsel identified in item 12 of the PATI request. Record 1 contained details about the consultant



counsel who provided services to the Government, including their name and contact details. Record 2 contained the details of an individual's employment contract, their name, contact information, social insurance number, terms of employment, and other personal details. The records also contained the name, signature and contact details for public officers who signed the service agreement or the employment contract.

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

112. The Information Commissioner agrees with the Ministry Headquarters that the exclusion in section 24(2)(a) did not apply to record 2, which was a specific public officer's employment contract. An employment contract template does not contain any personal information and might be subject to disclosure, if sought in a PATI request. When fully executed, however, the employment contract is personal to the public officer. It can include a number of personal details that are attached to the individual and not the post, such as start dates, starting salary, personal contact details, references to immigration status, age, pension status, housing allowances, and more.
113. Further, any given employment contract may contain a collection of the provisions drawn from a standard employment contract template, the CECC and the CBA between the Government and relevant union. Once these provisions were particularised for an individual into terms of employment, however, they are no longer attached to the post in the same way, for example, a job description would.
114. For the most part, record 1 contained information related to the services performed by the counsel who entered into a consultancy service agreement with the Ministry Headquarters or the Government at a certain time. Their name and the terms of the service agreement thus fell within the exclusion of personal information in section 24(2)(b) and are not considered further for this exemption.
115. The exclusion in section 24(2)(b) did not apply, however, to certain information in record 1, such as the counsel's signature, their contact details, payroll tax number and insurance details. The Information Commissioner continues her consideration of the application of the personal information exemption for these specific portions of record 1.

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

116. None of the exceptions to the exemption in section 23(2) applied. Specifically, the individuals to whom the information related had not consented in writing to disclosure of their personal information.

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

117. As the Ministry Headquarters argued, no public interest has been identified that would be furthered by the disclosure of the personal information in record 1 or record 2 (the employment contract), as described above in paragraph 111.
118. With respect to record 1, the Applicant urged that the public should be informed of any terms in relation to conflict of interest. As noted above, the Ministry Headquarters' reliance on the exemptions to withhold the terms of the contract was not justified and these terms are now subject to disclosure. Disclosure of the consultant's personal information in record 1 will not further this public interest in any manner.
119. For record 2, the Applicant argued that the public has an interest in understanding how counsel employed by the Government balances their obligations to their client (for example, to secure an expert witness) with their responsibilities as a public officer to be good stewards of public funds. Having carefully reviewed record 2 or the employment contract, the Information Commissioner is satisfied that disclosure of the record will not further this public interest.

#### *Conclusion*

120. The Information Commissioner is not satisfied that the Ministry Headquarters was justified in relying on section 23 to deny access to the name of the consultant and the terms of the consultant service contract in record 1. The Information Commissioner is satisfied that the Ministry Headquarters was justified in relying on section 23(1) to withhold record 2 (the employment contract) in full and the remaining parts of record 1.

#### *Conclusion*

121. The Information Commissioner finds that the Ministry Headquarters was justified in relying on section 16(1)(a) of the PATI Act to refuse items 1 and 5 of the PATI request, on section 16(1)(c) to refuse item 1, and on section 23(1) to deny access to record 2 and parts of record 1.
122. The Information Commissioner further finds the remaining parts of record 1 are not exempt under sections 26(1)(b) or 23(1) of the PATI Act.

## Decision

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The Information Commissioner finds that the Ministry of Legal Affairs Headquarters (**Ministry Headquarters**) was justified in relying on section 16(1)(a) of the Public Access to Information (**PATI**) Act 2010 to refuse items 1 and 5 of the PATI request, on section 16(1)(c) to refuse item 1, and on section 23(1) to deny access to record 2 and part of record 1. The Information Commissioner further finds that the remaining parts of record 1 are not exempt under sections 26(1)(b) or 23(1) of the PATI Act.

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

- affirms the Ministry Headquarters' internal review decision denying access to items 1 and 5 of the PATI request under section 16(1)(a), to item 1 under section 16(1)(c), and to record 2 and part of record 1 under section 23(1);
- reverses the reliance on section 26(1)(b), and for section 23(1) for the remaining part of record 1; and
- orders the Ministry Headquarters to disclose part of record 1 as directed by this Decision and the accompanying Confidential Annex in Appendix II and Order, which form part of this Decision, on or before **Wednesday, 12 June 2024**.

## Judicial Review

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The Applicant, the Ministry of Legal Affairs Headquarters, the Third Party 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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The Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Ministry 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  
1 May 2024

### Public Access to Information Act 2010

#### Refusal of request on administrative ground

- 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;
  - ...
  - (c) in the opinion of the head of the authority, granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority;
  - ...
- (2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

#### 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.
- ...
- (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—
- ...
- (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;

(b) information about an individual who is or was performing services under contract for a public authority that relates to the services performed, including the terms of the contract and the name of the individual; or

...

#### **Information received in confidence**

26 (1) Subject to subsection (2), a record that consists of the following information is exempt from disclosure—

...

(b) information, the disclosure of which would constitute a breach of a duty of confidence provided for by a provision of law.

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

### **Public Access to Information Regulations 2014**

#### **Interpretation**

2 ...

“public interest” means but is not limited to things that may or tend to—

- (a) promote greater public understanding of the process or decisions of public authorities;
- (b) provide reasons for decisions taken by the Government;
- (c) promote accountability of and within the Government;
- (d) promote accountability for the public expenditure or the more effective use of public funds
- (e) facilitate public participation in decision-making by the Government;
- (f) improve the quality of services provided by the Government and the responsiveness of the Government to the needs of the public or of any section of the public;
- (g) deter or reveal wrong-doing or maladministration;
- (h) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or
- (i) reveal untrue, incomplete or misleading information or acts of a public authority.

### **Unreasonable interference or disruption of other work**

- 9 (1) Before a public authority makes a decision to refuse access under section 16(1)(c) of the Act (on the basis that the request would unreasonably interfere or disrupt other work) the information officer shall send written communication to the applicant—
- (a) explaining how the request is likely to cause a substantial and unreasonable interference with or disruption of other work; and
  - (b) inviting consultation with a view to narrowing the request.
- (2) The information officer shall make a determination on the criteria for refusal in section 16(1)(c) of the Act on a case by case basis and for this purpose—
- (a) the resources to be considered are the existing resources of the public authority reasonably required to process the request consistent with attendance to other priorities including—
    - (i) identifying, locating or collating the records within the public authority's filing systems; and
    - (ii) deciding whether to grant, refuse or defer access to the records or edited copies including resources to be used in examining the records, consulting with any person or body, making copies (or edited copies) of the records, notifying the applicant of any interim or final decision on the request and any other matters and
    - (iii) deciding whether to grant, refuse or defer access to the records or edited copies including resources to be used in examining the records, consulting with any person or body, making copies (or edited copies) of the records, notifying the applicant of any interim or final decision on the request and any other matters; and
  - (b) the types of factors which shall be considered to determine whether the interference with or disruption of the other work would be unreasonable include—
    - (i) the nature and size of the public authority;
    - (ii) the number, type and volume of records falling within the request; and
    - (iii) the time involved in fully processing the request.

...

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