

## Decision Notice

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### Decision 22/2024: Bermuda Police Service

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#### Investigation records

**Reference no:** 2024015

**Decision date:** 29 July 2024

## Summary

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The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Police Service (**BPS**) for records concerning the closed criminal investigation into allegations of medical fraud against physicians at the Bermuda Healthcare Services and the Brown-Darrell Clinic. The BPS refused the request on the grounds that the information was exempt from disclosure under the following sections of the PATI Act: 23 (personal information), 25 (commercial information), 26 (information received in confidence), 29 (deliberations of public authorities), 30 (operations of public authorities), and 34 (law enforcement).

The Information Commissioner has found that the BPS was not justified in relying on the exemptions because it had not located and assessed the records. The Information Commissioner has varied the BPS's internal review decision to administratively deny the request under section 16(1)(c) because processing it would have created a substantial and unreasonable burden. The Information Commissioner does not require the BPS to take any further steps.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 16(1)(c) (substantial and unreasonable interference or disruption).

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

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

## Background

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1. In 2012, the Bermuda Police Service (**BPS**) initiated a large-scale fraud and corruption investigation involving physicians with the Bermuda Healthcare Services and the Brown-Darrell Clinic, one of whom was a former Premier of Bermuda.<sup>1</sup> The allegations arose from activities related to the clinics' provision of diagnostic imaging services. The

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<sup>1</sup> See Reuters, '[Prosecutors accuse Bermuda's ex-premier](#)' (20 January 2021); and [Commissioner of Police v Dr Mahesh Sannapareddy](#) [2020] CA (Bda) 4 Civ (20 March 2020). Previously, the cost of the ongoing investigation was discussed during parliamentary questions in the [House of Assembly](#) on 12 July 2019 (page 2091).

investigation, and the challenges brought against it, have given rise to numerous legal actions.<sup>2</sup>

2. On 3 March 2022, the Applicant made a Public Access to Information Act (**PATI**) request to the BPS. The PATI request asked for the then-closed file for the investigation of physicians with the Bermuda Healthcare Services and the Brown-Darrell Clinic.
3. Because the investigation was lengthy and the related records voluminous, on 14 March 2022, the BPS asked the Applicant to be more specific concerning the parts of the file that were requested. The Applicant advised on 16 March 2022 that they wanted the whole file.
4. On 16 March 2022, the BPS advised the Applicant that the request was too broad because the file contained hundreds of thousands of documents. The BPS also indicated that the records raised third-party considerations. The BPS again requested that the Applicant refine the request as much as possible to enable the BPS to readily assist with responding.
5. On 17 March 2022, the Applicant advised the BPS that they were seeking records in the investigation file concerning the number of scans carried out by the Bermuda Healthcare Services and the Brown-Darrell Clinic. The BPS followed up the next day, seeking clarification on whether the Applicant was seeking the actual number of scans carried out by the two facilities. The same day, the Applicant confirmed by asking for any records that showed these figures as well as any investigation surrounding those numbers.
6. The BPS advised that it would work on the PATI request.
7. On 11 April 2022, the BPS asked the Applicant if the investigative summaries would satisfy the request, and the Applicant confirmed that it would on 12 April 2022.
8. On 20 April 2022, the Applicant advised the BPS that a decision was due the previous week and requested an update.
9. On 22 April 2022, the Applicant asked for an internal review due to the BPS's failure to issue an initial decision on the request. The Applicant noted that the internal review decision was due by 3 June 2022.

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<sup>2</sup> These include, for example, a civil action challenging the legality of the arrest in [Commissioner of Police v Dr Mahesh Sannapareddy](#) [2020] CA (Bda) 4 Civ (20 March 2020), and a challenge to recuse the judge in the criminal proceeding, [Ewart Frederick Winslow Brown v Director of Public Prosecutions, Attorney General, Deputy Governor; and The Queen v Ewart Frederick Winslow Brown](#) [2021] SC (Bda) 74 Civ (10 September 2021) (which includes a lengthy background of the various events and proceedings).

10. On 29 May 2022, the BPS issued an internal review decision, which denied access to the records on the basis of sections 23 (personal information), 25 (commercial information), 26 (information received in confidence), 29 (deliberations of public authority), 30 (operations of public authorities), and 34 (law enforcement). In its internal review decision, the BPS also advised the Applicant that the PATI request was very broad and still covered a very large number of responsive records. The BPS encouraged the Applicant to be more specific with the nature of information that they were seeking.
11. On 31 May 2022, the Applicant made a timely application for an independent review.

## Investigation

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12. The Information Commissioner's Office (**ICO**) accepted the application as valid. The Information Commissioner confirmed that the Applicant made a valid request for an internal review to a public authority. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
13. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application because the BPS's submissions were required.
14. The ICO notified the BPS of the valid application on 29 June 2022 and asked for the responsive records. A lengthy period of delay followed, during which the BPS initially refused to afford the ICO access to the records at issue and the ICO addressed a backlog of other pending reviews.
15. In March 2024, the ICO discussed with the Applicant whether the request could be narrowed. At the end of the month, the Applicant advised the ICO that they understood the BPS compiled an investigation file and this was what the Applicant was seeking. The Applicant also understood that some records contained information about scans and referrals. The Applicant clarified that they were not seeking personal information about patients or records that did not come within the PATI Act's scope by virtue of section 4. The Applicant confirmed that they did not know what records were held, but that they wished to have what could be disclosed.
16. Between April and June 2024, the ICO sought and ultimately received from the BPS a more detailed understanding of the volume of records that were responsive to the request, for the purpose of determining whether it was possible to narrow the records at issue in this review.

17. 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 before she makes her decision. Following these discussions and subsequent further discussions, both the BPS and the Applicant were invited to comment on the issues under review.
18. The ICO invited the BPS's submissions, and the ICO observed that the volume of records at issue could raise concerns that an administrative denial under section 16(1)(c) might have been more appropriate. It would require, though, confirmation that the BPS had offered to assist the Applicant to narrow the request. This would include providing the Applicant, during this review, with a more detailed understanding of the nature and volume of the records.
19. On 14 May 2024, the BPS confirmed that it abandoned its reliance on the exemptions and changed in its position in this review to rely on section 16(1)(c). The exemptions were no longer considered in this review. The BPS provided further submissions on 13 June 2024, including screenshots detailing the volume of responsive records.
20. On 25 June 2024, the ICO invited the Applicant's submissions on the revised issue and, again, encouraged the Applicant to provide submissions on alternative ways to narrow the request. No submissions were received.

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

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21. In coming to this Decision, the Information Commissioner considered all the relevant submissions, or parts of submissions, made by the parties. She is satisfied that no matter of relevance has been overlooked.

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

22. Public authorities are entitled under section 16(1)(c) to administratively deny a PATI request if, in the opinion of 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.
23. 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.

24. 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 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.

25. 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 the 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.
26. 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.
27. 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 allows 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.
28. 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>3</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.

29. 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>4</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 obtain 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; to increase the accountability of public authorities; and to inform the public about the activities of public authorities.
30. 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 the time involved to fully process the request.
31. 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.
32. 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.
33. 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>5</sup>:

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

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

<sup>5</sup> See [Decision 03/2018](#), [Department of Health](#), at paras. 23-50.

[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?

34. The specific circumstances in each case will inform the Information Commissioner's assessment.
35. 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*

36. As noted above, the BPS explained that it had informed the Applicant several times in March 2022 that the request was too broad and generated hundreds of thousands of responsive records. The BPS also pointed out that the records prompted the need to consider third party notices, which would have been burdensome. It explained that, in an effort to assist and process the request, it had offered the Applicant several options. During these communications, the Applicant clarified that they were seeking any records showing the number of scans conducted by the two clinics, along with any investigation surrounding those numbers. The BPS proposed the option of providing only the actual number of scans performed and investigative summaries, which the Applicant said would be sufficient at the time.
37. During this review, the BPS also provided further, specific details about the volume of responsive records. The BPS provided screenshots to the ICO showing that the potentially responsive records consisted of 84 gigabytes of data for this particular investigation from a sizable number of sub-folders held within each respective folder. In the absence of further narrowing by the Applicant, the BPS explained that this was too voluminous a set of records to review.
38. In discussions with the ICO, the BPS also explained the responsibilities and workload of the BPS's Information Officer, who also served as a police constable.

*Applicant's submissions*

39. The Applicant maintained during the review that they understood that a file was created by the BPS and this was the file they were seeking. In an effort to narrow the records at issue, the Applicant indicated that they did not challenge the denial of any records that fell outside the PATI Act by virtue of section 4 or personal information about patients in the records.



40. The Applicant also argued that the police case was no longer active and, therefore, they sought any information that could have been disclosed.

*Discussion*

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

41. The BPS offered to assist the Applicant with narrowing the request during its initial handling of the request. This included four separate attempts between March 2022 and May 2022 to ask the Applicant to refine the request and a final effort in its internal review decision to encourage the Applicant to narrow the request and, presumably, reengage with the BPS.
42. The BPS also specifically explained that it was challenged with processing the request because of the volume of hundreds of thousands of records, as well as the need to engage third party notices. This provided the Applicant with specific information to enable amendments to the request that would have narrowed it.
43. Overall, the BPS offered numerous times to amend the request and remained ready to process an amended request.

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

44. The Information Commissioner accepts that processing 84 gigabytes of electronic investigation records would have created a substantial and unreasonable burden, even if the only factor considered was the sheer volume of records.
45. Records amounting to 84 gigabytes of data could consist of nearly 678,000 pages of text files, more than 100,000 pages of emails, almost 65,000 pages of Microsoft Word files, or close to 15,5000 pages of images—or some combination of this volume.<sup>6</sup> The Applicant did propose to remove any records of personal information or those records falling outside of the PATI request, but this would still have required some minimal review of the existing records to remove those categories.
46. Retrieving and examining this many records would have been time consuming and would have required most of the time and efforts of the Information Officer for a significant period. The BPS receives more PATI requests from any other public authority, as reported

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<sup>6</sup> This was based on calculations sourced from 'DWR e-discovery'.

annually in the Information Commissioner's annual reports. The BPS Information Officer was responsible for managing these PATI requests, along with performing his daily duties as a police constable. Retrieving and examining the responsive records would either have required the majority of the existing Information Officer's time, to the neglect of other duties, or would have required assigning additional officers to assist with this request, reducing their capacity to perform their law enforcement responsibilities. This burden would have risen to a level of substantial interference or disruption to the Information Officer and the BPS's work.

47. It would also have been unreasonable. The Applicant has not identified what information they were seeking or what aspect of the investigation they were interested in, such as records addressing the decision to prosecute, any records documenting how patient confidentiality had been maintained, or records related to the cost of the investigation, and so on. Instead, the Applicant appeared to have made a broad request about what ultimately became a sprawling investigation in hopes of receiving any information that might have been subject to public disclosure.
48. Under these circumstances, whether during this review or when initially responding to the PATI request, it would have been unreasonable for the BPS to expend substantial resources to review voluminous records and identify those that might be disclosable or subject to an exemption. Even once the records were located and collated, the BPS would have needed to devote significant resources to asserting exemptions and potentially engaging in third party notifications. Ultimately, many of the records are likely to be exempt, and some of these exemptions (such as those for law enforcement) would not be subject to the usual public interest test in section 21 of the PATI Act.
49. Without parameters, such as time frames or more limited subject matter topics, processing the request would have created a substantial and unreasonable interference with the BPS's other work.

### ***Conclusion***

50. The Information Commissioner is satisfied the BPS has correctly refused the PATI request and was justified in relying on section 16(1)(c) to support an administrative denial of the request in this review.
51. Finally, the Information Commissioner acknowledges the regrettable delays that arose from circumstances both internal and external to her office in this review and apologises to the Applicant, the BPS and the public.

## Decision

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The Information Commissioner finds that the Bermuda Police Service (**BPS**) was justified in refusing the request under the Public Access to Information (**PATI**) Act 2010. The Information Commissioner also finds, however, that the BPS was not justified in relying on the original exemptions because it never collated and examined the records. The Information Commissioner finds that, during this review, the BPS has justified administratively denying the request under section 16(1)(c) of the PATI Act.

In accordance with section 48 of the PATI Act, the BPS's internal review decision is varied to administratively deny the request under section 16(1)(c) of the PATI Act. The Information Commissioner does not require the BPS to take any further action.

## Judicial Review

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The Applicant, the Bermuda Police Service, 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.

Gitanjali S. Gutierrez  
Information Commissioner  
29 July 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—

...

(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 Access to Information Regulations 2014

#### 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 ... 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

(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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