

## Decision Notice

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### Decision 30/2024: Bermuda Police Service

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#### **Promotion process records**

**Reference no:** 2024022

**Decision date:** 14 October 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 related to a promotion process. In response, the BPS refused to disclose records responsive to the first part of the PATI request on the basis that they were exempt under sections 30(1)(b) (management functions), 26(1)(a) (information received in confidence) and 23 (personal information). The BPS also administratively denied the second part of the PATI request, finding that records, as requested, did not exist.

In this Decision, the Information Commissioner has found that section 30(1)(b) was appropriately engaged for all withheld records and the BPS had taken all reasonable steps before administratively denying the rest of the PATI request. No further action has been required.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 16(1)(a) (record does not exist or cannot be found); section 21 (public interest test); section 30(1)(b) (management functions).

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

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

## Background

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1. On 1 February 2024, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**BPS**) for records relating to a promotion process they had participated in as a candidate. The PATI request specifically sought:
  - a. records showing the rank order assigned by each selection panel member to the Applicant (**item 1**) and all comments made by the selection panel, in their own words, about the Applicant (**item 2**); and
  - b. senior management meeting minutes where a new promotion policy as implemented by the Commissioner of Police had been discussed and agreed (**item 3**), as well as the implemented promotion policy (**item 4**).
2. On 2 February 2024, the Applicant clarified for the BPS that, for items 1 and 2, they were not seeking any selection panel member's name in relation to the rank order assigned by that panel member or their submitted comments about the Applicant.

3. On 14 March 2024, the BPS issued an initial decision to the Applicant. The BPS refused to disclose any records showing each selection panel member's rank order and comments about the Applicant, referring to these records as exempt under sections 30(1)(b), 26(1)(a) and 23 of the PATI Act 2010. The rest of the PATI request about the implemented promotion policy was administratively denied under section 16(1)(a), on the basis that responsive records did not exist.<sup>1</sup>
4. On 14 March 2024, the Applicant asked the BPS for an internal review, explaining why they disagreed with the initial response to their PATI request.
5. On 1 May 2024, the BPS issued an internal review decision to the Applicant, which upheld the initial decision. The internal review decision further specified for the Applicant which position they held in their final ranking, i.e. the exact number within the ranking group. The BPS's Head of Authority also offered to meet the Applicant so they could share more feedback and possibly answer the Applicant's specific questions, besides disclosing any exempt information as had been referred to in the BPS's initial decision.
6. On 2 May 2024, the Applicant asked for an independent review by the Information Commissioner, to challenge the BPS's internal review decision.<sup>2</sup> They explained why they disagreed with the BPS's decision to not disclose to them the information they asked for.

## Investigation

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7. The Information Commissioner's Office (**ICO**) accepted the application as valid on 8 May 2024, 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. The ICO also confirmed the issues that the Applicant wanted the Information Commissioner to review.

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<sup>1</sup> The BPS's initial decision also enclosed two documents. The first was a feedback letter from the Commissioner of Police to the Applicant, which set out each candidate's final ranking group and a summary of the selection panel's comments about the Applicant on each competency that had been evaluated during that process. The second was an internal document, which set out the promotion process that had been followed (as referred to below in paragraph 20). Each document was already in the Applicant's possession.

<sup>2</sup> The BPS was late by 4 working days in issuing its internal review decision. When the Applicant had not received this decision by the 6-week statutory limit, i.e. 25 April 2024, they first asked the Information Commissioner to review the BPS's 'failure to decide'. Once the BPS's internal review decision had been issued, and since their initial application to the Information Commissioner had not been validated, the ICO updated their application before the Information Commissioner (with the Applicant's agreement) from a 'failure to decide', under section 45(1)(b), to one seeking a 'substantive' review, under section 45(1)(a) of the PATI Act.

8. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application, because examining the withheld records was required to evaluate the BPS's reliance on the provisions, and submissions from both parties were required to assess the administrative denial.
9. The ICO notified the BPS of the valid application on 14 May 2024 and requested access to the withheld records. The BPS wrote the ICO on 7 June 2024 with its preliminary submission in response to the issues under review as set out in the ICO's notice letter.
10. On 8 June 2024, the BPS requested that the ICO inspect the withheld records on-site. On 20 June 2024, the ICO met with the BPS's Head of Authority (the Commissioner of Police) and the BPS's Information Officer to examine the records at issue. The set of responsive records consisted of each selection panel member's completed ranking sheet and feedback form as well as a spreadsheet showing each candidate's ranking order as assigned by the selection panel members (who were identified by pseudonyms). The BPS affirmed that all responsive records were considered exempt, in full, under sections 30(1)(b), 26(1)(a) and 23, as relied on in its initial and internal review decisions.
11. As required by section 47(4) of the PATI Act, on 4 July 2024, the parties were invited to make representations to the Information Commissioner. The Applicant's submission was received on 5 July 2024, further to earlier comments made on 29 May 2024 (during an exchange when they had asked the ICO for an update) and in their review application. Though the BPS did not add a submission following the ICO's invite of 4 July 2024, the BPS's explanations through other correspondence—namely, its initial decision to the Applicant, its initial response to the ICO's notice, as well as during the ICO's on-site visit (which were affirmed in writing on 9 September 2024)—have been considered below.

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

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

### ***Record did not exist or could not be found – section 16(1)(a)***

13. 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.
14. 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.

15. 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.
16. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following:
  - [1] the quality of the public authority's analysis of the PATI request;
  - [2] the scope of the search that it decided to make based on that analysis; and
  - [3] the rigour and efficiency with which the search was then conducted.
17. The specific circumstances in each case will inform the Information Commissioner's assessment.
18. 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.

*Public authority's submissions*

19. As background, the Commissioner of Police explained to the ICO that, in his former role as the Deputy, they had been tasked by the BPS's former Commissioner to manage a specific promotion process and follow a UK practice. This led the then-Deputy to undertake a wider consultative exercise about changing the BPS's general promotion process,<sup>3</sup> and thereafter they set about to design a process for introducing a new promotion policy. The BPS explained that the power to implement a new policy came

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<sup>3</sup> In its submissions, the BPS provided the ICO with its existing promotion policy titled 'Promotion process for police officers'. The document (reference no. A-3/014) indicated that it was last amended in October 2017 and was available to all the BPS's employees.

from sections 3 and 33 of the Police Act 1974,<sup>4</sup> and that, under the BPS's Conditions of Service, the Commissioner of Police was required to consult on changes with the Bermuda Police Association.

20. The BPS further explained that the new promotion policy was in draft but not yet formally implemented. In the interim, when promotions were due to take place, the Commissioner of Police had been publishing a Service Standing Instruction in a General Order, which would set out the process to be followed—and would invite candidates' views on that process. The BPS submitted that this occurred for the promotion process that was the subject of this PATI request and was the reason the BPS had administratively refused the second part of the Applicant's PATI request.
21. The BPS's Head of Authority confirmed that there were no written records of meetings with senior management about the new promotion policy, apart from any consultative exercise during each promotion process where feedback would have been discussed verbally and then integrated into practice at the Commissioner of Police's discretion. The Head of Authority further confirmed that candidates for the promotion process were given an opportunity to provide feedback on the process to be adopted for the promotion process. The Commissioner of Police stated that, while there were no written records of discussions held with the candidates, many of their suggestions were incorporated into the process.
22. Lastly, the BPS made submissions to the ICO that the Applicant had not raised objections to the promotion process, as set out in the relevant General Order, being adopted. The BPS submitted that, where no objection was raised, it could be inferred that a candidate had waived any objection through their acquiescence or full acceptance of the new process. The BPS also stated that the Applicant had the opportunity to pursue a review and appeal of the promotion process but that they did not do so.

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<sup>4</sup> Section 3 of the Police Act provides that, "The Service shall be under the command of the Commissioner, who, subject only to such general directions of policy with respect to the maintenance of public safety and public order as the Governor may give him, shall determine the use and control the operations of the Service, and shall be responsible subject to such directions as the Governor may give him, for the administration of the Service."

Section 33 of the Police Act provides that, "The Commissioner may issue administrative instructions, to be called Service Standing Instructions, not inconsistent with this Act or any order made thereunder, for the general control, direction and information of the Service and Reserve Police, and any such instructions may in particular relate to any or all of the following matters—(a) organisation, administration, enlistment, training and discipline...".

*Applicant's submissions*

23. The Applicant did not make specific submissions on section 16(1)(a) and the BPS's decision about the implemented promotion policy.

*Discussion*

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

24. The Information Commissioner finds that the quality of the BPS's analysis of items 3 and 4 of the PATI request was adequate. The BPS understood that the Applicant was seeking records of minutes from any meetings amongst the BPS's senior management where the new promotion policy—which the BPS submitted was in the process of being drafted and not yet formally implemented—had been discussed and agreed, as well as the new promotion policy itself. This would not have included notes from consultations held, if any, with officers outside of the BPS's senior management, the Bermuda Police Association or other groups to obtain feedback on the pending promotion policy.

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

25. As stated above, the BPS explained to the ICO that the Commissioner of Police had overseen a consultative exercise with the goal of implementing a new promotion policy within the BPS, which was pending. The Commissioner of Police, as the person-in-charge of amending the promotion policy, had confirmed that there was no 'new' promotion policy, as such, which would have been responsive to item 4 of the PATI request.
26. The Commissioner of Police, as the most senior person in the BPS, and the person with responsibility for implementing the new promotion policy, confirmed that there were no records taken of meetings between senior management related to the new promotion policy. Discussions were verbal and then put into practice by outlining the process in a Service Standing Instruction for specific promotion processes, such as in this case. The Information Commissioner considers that, although it might have been possible that individual meeting participants might have taken a note for themselves during those verbal discussions, attempting to locate them or confirm their existence would go beyond a reasonable search for item 3 of this PATI request.
27. Given the position and seniority of the Commissioner of Police, as well as his working knowledge and role in implementing the new promotion policy, the Information Commissioner is satisfied that the scope of the BPS's search for items 3 and 4 was adequate.

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

28. For similar reasons as stated above, the Information Commissioner is satisfied that the rigour and efficiency with which the search was conducted was adequate. No aspect of the parties' submissions, within the BPS's decisions or in its supporting documents and withheld records reviewed, indicated any reason to probe further during the independent review. The Information Commissioner finds no basis to dispute the submission of the Commissioner of Police, being the Bermuda Police Service's most senior public officer, in relation to the rigour of the search carried out prior to issuing its responses on items 3 and 4 of the PATI request.

*Conclusion*

29. In conclusion, the Information Commissioner is satisfied that the BPS has justified its reliance on section 16(1)(a) in administratively denying items 3 and 4 of the PATI request.
30. The Information Commissioner has noted the BPS's submission, at paragraph 22, about the Applicant's right to have objected to the promotion process and pursue an appeal. This submission was beyond the ICO's remit under the PATI Act, though included above for the sake of completeness.<sup>5</sup>

***Management functions – section 30(1)(b)***

31. A public authority may rely on section 30(1)(b) to deny access to a public record whose disclosure could reasonably be expected to have a significant, adverse effect on a public authority's performance of any of its functions relating to management.
32. A public authority must identify the relevant management function involved. Further, it must show how disclosure could reasonably be expected to cause the specific harm, i.e. a significant, adverse effect on the performance of any management function.<sup>6</sup>
33. Section 30(1)(b) gave two examples of the relevant functions, as a public authority's industrial relations and management of its staff. Generally, 'management functions' relate to a public authority's internal management of its routine operations. They may include strategic planning, financial resource management, security of IT functions,

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<sup>5</sup> See [Furbert v Department of Human Resources](#) [2019] SC (Bda) 19 Civ, at paragraphs 17 and 18, which upheld the Information Commissioner's findings in [Decision 02/2018, Department of Human Resources](#), at paragraphs 104 and 105, where the Information Commissioner had explained that her mandate and jurisdiction was limited to enforcing the right to access public records. The PATI Act does not grant the Information Commissioner any authority to make determinations on the content or subject matter of public records.

<sup>6</sup> The Information Commissioner has published a [guidance note on the section 30\(1\) exemption](#).



complaints handling and operational assessments (for instance, reviewing existing processes, proposing new ones and piloting them). They should be understood as a narrower category than the performance of a public authority's statutory functions that are assigned to it in law.

34. Importantly, the exemption is not limited to the performance of management functions by the public authority holding the records at issue and thereby making the decision on the PATI request. It covers such performance of another public authority where relevant.<sup>7</sup>
35. Other operational functions, such as a public authority's negotiations and audits, are addressed by the other subsections in the exemption. Therefore, they are treated as separate from this category of management functions.
36. 'Having a significant, adverse effect' is not defined in the PATI Act.<sup>8</sup> By its ordinary definition, it means bringing about an unfavourable or harmful result whose damage is severe, which is a stronger showing of harm than the usual standard of 'prejudice'.
37. Further, the likelihood must be that a reasonable person may expect the anticipated harm to occur considering all circumstances of the case. The expectations must be likely, plausible or possible based on real and substantial factual grounds.
38. If section 30(1)(b) is properly engaged, the public interest test must be applied. Where the public interest would, on balance, be better served by disclosure than by non-disclosure, then the records must still be disclosed.
39. In sum, when applying the exemption in section 30(1)(b), a public authority must ask:
  - [1] Does the affected function relate to management of the public authority?
  - [2] What is the specific significant, adverse effect?
  - [3] How could disclosure cause a significant, adverse effect to the identified management function?
  - [4] What is the likelihood of the significant, adverse effect occurring?

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<sup>7</sup> This is based on the wording of 'a public authority', not 'the public authority', and drawn from the [Irish ICO Guidance on functions and negotiations](#), at paragraph 3.4.

<sup>8</sup> This harm standard is different from 'prejudice', which applies to most other exemptions in the PATI Act. It may be understood in the same terms as the harm standard for section 31(1), i.e. having a 'serious adverse effect'.

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

40. A public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify its reliance on section 30(1)(b) to deny access to the records.

*Public authority's submissions*

41. The BPS submitted that the relevant function relating to the BPS's management was the BPS's internal promotion process as well as the overall promotion and maintenance of a culture of organisational teamwork, camaraderie, cohesion and trust, which was required for an effective law enforcement organisation.
42. The BPS explained how the promotion process was set up, which included an evaluation of the candidates by a panel, with anonymous feedback given in confidence to the Commissioner of Police, who had kept the original documents in a secure cabinet. During the evaluation process, the selection panel members volunteered to engage in a peer review of the candidates' qualifications and service. The BPS described that the panel was selected for the members' depth of knowledge, extensive and diverse experience, and professionalism. The move towards including a peer-reviewed process was designed to also create a more inclusive and comprehensive consideration of candidates.
43. Safeguards were incorporated to preserve the anonymity of the selection panel members' feedback, to protect the integrity of the process, and to promote fairness and transparency about the process. For example, the candidates were informed of the panel's demographics, the selection panel members were given an opportunity to disclose conflicts of interest, and the candidates were encouraged to seek feedback after the process was concluded in support of their professional development. The BPS implemented measures to preserve the anonymity of the selection panel members' feedback (such as using a pseudonym for the feedback forms). The BPS also briefed the candidates in advance on the peer-review process, the anonymised nature of the feedback, and the availability to the candidates of receiving general, summarised feedback once the process had ended. The anonymity was crucial for ensuring that the selection panel each could provide their unbiased assessments without fear of repercussions on their day-to-day professional relationships with the candidates.
44. The BPS submitted that, despite all these measures, some selection panel members' feedback inadvertently discussed prior work or interactions with the candidates. Even if anonymised, the BPS asserted that this feedback potentially revealed those panel

members' identity, in part because of their long-standing working relationship with some candidates.

45. The BPS further explained that disclosure of the feedback or ranking might have caused conflicts between people where candidates could have discerned that panel members who were their close colleagues had not recommended them for promotion. Although in most cases there would be various rankings for each candidate, the BPS submitted that it was conceivable for a candidate to be ranked the lowest by every panel member, which would remove any sense of anonymity because the candidate would know each panel member had not recommended them.
46. The BPS remained concerned about significant risks that could have occurred by releasing the specific comments attributed by specific panel members or other disclosures that could have revealed panellists' rankings or views of a candidate.
47. The BPS also identified the following significant, adverse effects arising from disclosure:
  - a. Undermine the peer review ethos: revealing information received during a peer-review process could undermine trust in the integrity and objectivity of evaluations, potentially leading to scepticism or diminished reliance on peer-review processes.
  - b. Critical confidentiality concerns: releasing information where confidentiality was expressed, could jeopardise the trust and cooperation of the selection panel and future panels, damage professional relationships, and hinder the BPS's ability to handle sensitive matters effectively.
  - c. Transparent disclosure and empowerment: while transparency was generally beneficial, indiscriminate disclosure of certain information could lead to misunderstandings, misinterpretations, or exploitation of vulnerabilities, potentially harming organisational effectiveness or reputation.
  - d. Confidentiality as paramount: breaching confidentiality agreements or protocols could erode trust among the panel and future panels, damage relationships, and compromise the BPS's ability to secure confidential information in the future.
  - e. Potential impact on organisational harmony: releasing information that could disrupt organisational dynamics, such as through internal disagreements, personnel issues, or undermining confidential deliberations, might create tension, conflict, or loss of morale among staff members.

- f. Expectation of anonymity preservation: violating assurances of anonymity preservation could deter individuals from participating in sensitive processes, compromising the quality and effectiveness of the BPS's future processes.
  - g. Violation of trust and circumstances: disregarding the trust placed in the panel to handle information responsibly and ethically could result in reputational damage, loss of credibility, and diminishing a panel's confidence in the BPS's integrity and reliability.
48. While the BPS accepted that the public had a general interest in transparency and understanding the BPS's operations more fully, the BPS submitted that disclosure of the records sought would have offered the public little insight into the BPS's operations and decision-making. In this case, the BPS submitted that the Applicant was aware of the process in place and that disclosure of the records would have benefitted the Applicant alone and not the wider public.
49. On the other hand, the BPS submitted that disclosing the information would have undermined the public interest in having fair and objective processes for promotion within the BPS as well as the public interest in ensuring that the BPS could maintain organisational harmony and cohesion between its members and that members were not embroiled in internal strife.
50. The BPS submitted, therefore, that the balance of the public interest did not require disclosure of the records at issue.

*Applicant's submissions*

51. The Applicant submitted that disclosure of the information sought in their PATI request could not have had an adverse effect on the BPS and would not have hindered the BPS's operations. The Applicant believed that all generic comments should have been disclosed to them, while they accepted that it was reasonable for the BPS to have withheld any information that could reveal a selection panel member's identity to them based on any specific comments.
52. The Applicant further submitted that it was in the public interest for the BPS to be transparent about how it governed itself and that this would include how it governed its processes. The Applicant submitted, therefore, that access to the records they sought would have furthered this public interest in transparency. Further, the Applicant submitted that it was in the public interest for the BPS's staff to function at the highest levels and that the Applicant was seeking feedback on their own performance to assess

where and if they needed to make improvements. The Applicant described their request as vital to their future development.

*Discussion*

[1] What was the relevant function relating to management of the public authority?

53. Section 30(1)(b) refers to “functions relating to management” and specifically includes “management of its staff”. Promotion processes fall squarely within the management of a public authority’s staff and, therefore, the affected function in this Decision related to the management of the BPS.

[2] What was the specific significant, adverse effect?

54. The BPS identified various specific significant, adverse effects that could have been caused by disclosure of the records responsive to items 1 and 2 of the PATI request. The Information Commissioner accepts the BPS’s submission that disclosure could have undermined the integrity, objectivity, fairness and confidentiality of the promotion process, jeopardised the trust and cooperation of the selection panel and future selection panels, damaged professional relationships within the BPS, and disrupted organisational harmony and effectiveness, including through internal discord and personnel issues that might lead to tension, conflict or a loss of morale among staff.

[3] How could disclosure have caused the significant, adverse effect on the identified management function?

55. Disclosure could have undermined the integrity, objectivity, fairness and confidentiality of the promotion process because it was clear from the process itself that the individual ranking orders and feedback assessments given by each panel member were intended to remain confidential. A pseudonym was assigned to each of the panel members at the time they were asked to conduct the selection assessment. The Information Commissioner accepts that this information was not intended to be shared with the candidates and that the BPS was justified in reasoning that disclosure of it could have undermined the integrity, objectivity, fairness and confidentiality of the promotion process, where panel members had participated with the express expectation that their ranking and comments would not be disclosed to the candidates—either once the promotion process was concluded or through other means.
56. Similarly, the Information Commissioner accepts the BPS’s argument that disclosure could have jeopardised the trust and cooperation in future selection panels. Where panel members were asked to provide a ranking and comments with the expectation of them

remaining confidential, disclosure of that same information could jeopardise the trust and cooperation of past members on future selection panels.

57. The Information Commissioner also considers that disclosure could have caused damage to professional relationships within the BPS. It was possible that, even if the feedback forms were anonymised by a pseudonym, releasing the records themselves would have enabled a candidate to determine who had given the feedback. As the BPS submitted, some panel members had worked with candidates for many years, and it was possible that a candidate would be able to identify their handwriting, style of writing, vocabulary, and other things unique to a particular panel member that could be identifiable in their feedback. This was apart from comments that were specific to experiences shared between a panel member and a candidate that might have been referred to in the feedback.
58. Furthermore, disclosure could have caused disruption to the BPS's organisational harmony and effectiveness, including through internal discord and increased personnel issues. In the promotion process, panel members were asked to submit an unbiased, honest and transparent view about a candidate's suitability for the relevant position. Where a panel member viewed that a candidate was not suitable for a position (or less suitable than others), and the candidate was able to discern the identity of the panel member, it might have affected the candidate's ability to work alongside that panel member in the future and could have caused tension or conflicts to arise.

[4] What was the likelihood of the significant, adverse effect occurring?

59. The Information Commissioner accepts that the above significant, adverse effects were likely to occur if the records, particularly those responsive to item 2 of the PATI request, were disclosed. Although the feedback submitted by panel members was anonymised under a pseudonym, they were submitted in handwritten or typed form by each panel member. There was not a standard font or other formatting applied to each feedback form. Therefore, it was likely that disclosure of these documents would enable a discerning candidate to identify a panel member's feedback, particularly where the panel member was someone that had worked closely with the candidate.
60. For item 1 of the PATI request, although the ranking order itself was anonymised and would not disclose any information that would identify a panel member, it was conceivable that, where a candidate was not recommended for promotion, they would not have received a high ranking (i.e. 1 or 2) by any panel member, which would enable a candidate to infer that none of the panel members had recommended them for

promotion—and the adverse effects identified above (e.g. damage to professional relationships and creating internal discord, conflict or tension) were likely to occur.

[5] If the exemption was engaged, did the balance of the public interest require disclosure?

61. The Information Commissioner accepts the Applicant's submission that it was in the public interest for the BPS to be transparent about how it governed its promotion processes. In this case, however, the Information Commissioner is satisfied that the process itself was transparent, having reviewed the BPS's existing promotion policy as well as the Service Standing Instructions for the specific promotion process.
62. The Information Commissioner, therefore, accepts the BPS's submission that disclosure of the records at issue would not have furthered the public interest in promoting accountability of the BPS and transparency in its decision-making. There was no maladministration that would require disclosure of the records in the public interest.
63. Although there was a public interest in enabling the BPS's staff to function at the highest levels by giving them access to feedback on their own performance to assess where and if they needed to make improvements, this must be balanced with the public interest in maintaining the exemptions where reasonable grounds were shown on why they had been applied. The Information Commissioner notes that the BPS provided a summary of the final ranking order groups and a summary of the individual feedback to assist the candidates with assessing their own performance. In the PATI framework, this was a reasonable, alternate disclosure, as contemplated by section 18 of the PATI Act. It remained an option for candidates to discuss the feedback directly with the Commissioner of Police, as stated in the internal review decision.
64. As stated above, the public interest in disclosure must be balanced with the public interest in maintaining exemptions. In this case, there was a strong public interest in ensuring that the BPS remained able to conduct promotion processes with objectivity and integrity, as it was in the public interest that those being promoted within the BPS were being recommended for promotion in accordance with a fair and objective process and subject to a transparent evaluation by selection panel members. It was also in the public interest to ensure the BPS's organisational harmony and that professional relationships were maintained, which would ensure that the BPS could fulfil its broader functions in society.
65. The Information Commissioner, therefore, is satisfied that the balance of the public interest fell in favour of non-disclosure of the records under the PATI Act.

### *Conclusion*

66. The Information Commissioner is satisfied that the BPS was justified in its reliance on section 30(1)(b) to refuse disclosure, in full, of the records responsive to items 1 and 2 of the PATI request. Given this, considering the BPS's reliance on sections 26(1)(a) and 23 is not necessary in this Decision.

### *Conclusions*

67. In sum, the Information Commissioner has concluded that the BPS has justified its reliance on section 16(1)(a) to have administratively denied items 3 and 4 of the PATI request and on section 30(1)(b) to have withheld the records responsive to items 1 and 2. The Information Commissioner, therefore, has affirmed the BPS's internal review decision.
68. The Information Commissioner notes that, in the future, PATI requests for a requester's own personal information, such as in the first part of the request that is subject to this review, will be subject to the framework set out in the [Personal Information Protection Act 2016 \(PIPA\)](#).<sup>9</sup> Once PIPA is fully enacted, individuals will have the right to request their own personal information from public authorities (as well as certain private organisations), and these kinds of requests will not be subject to the PATI Act.<sup>10</sup> Any disclosure of a requester's personal information under PIPA will be to the individual requester only and, therefore, the tests for disclosure will differ from those under the PATI Act, which is intended to be used for seeking the disclosure of records to the public.

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<sup>9</sup> PIPA was given royal assent on 27 July 2016 and is meant to come fully into force on 1 January 2025. Pursuant to the [PIPA Commencement Day Notice 2016](#), certain administrative provisions of PIPA were enacted on 2 December 2016, which enabled the appointment of the Privacy Commissioner and the creation of the Privacy Commissioner for Bermuda (**PrivCom**). On 15 June 2023, in a [joint press conference](#), the Government of Bermuda and PrivCom announced that the official date for the remaining provisions of PIPA to come into effect was 1 January 2025. In March 2024, it was [announced](#) that the Minister for the Cabinet Office had signed a 'PIPA Intent Statement' committing that the Government would be PIPA ready by 1 January 2025.

<sup>10</sup> See PrivCom's [Guide to PIPA](#), which explains the data protection and privacy principles, individual rights, and the obligations that organisations have under PIPA. The section on the 'Rights of individuals' starts at page 59 of the Guide.



## Decision

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The Information Commissioner finds that the Bermuda Police Service (**BPS**) was justified in relying on sections 30(1)(b) and 16(1)(a) of the Public Access to Information (**PATI**) Act 2010, respectively, to refuse access to records responsive to items 1 and 2 and to administratively deny items 3 and 4 of the Applicant's PATI request. In accordance with section 48 of the PATI Act, the Information Commissioner affirms the internal review decision by the BPS. 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  
14 October 2024

## Appendix: Relevant statutory provisions

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### Public Access to Information Act 2010

#### Refusal of request on administrative grounds

- 16 (1) A public authority may refuse to grant a request if—
- (a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;
  - ...

#### Public 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.

#### Operations of public authorities

- 30 (1) Subject to subsection (2), a record is exempt if its disclosure could reasonably be expected to—
- ...
  - (b) have a significant, adverse effect on the performance by the public authority of any of its functions relating to management (including industrial relations and management of its staff);
- (2) A record shall be disclosed if disclosure of it is in the public interest.

### Public Access to Information Regulations 2014

#### Reasonable search

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

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