

Decision Notice

Decision 39/2024: Bermuda Police Service

Complaint and criminal case records

Reference no: 2021058

Decision date: 31 December 2024

Summary

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 criminal case that had been brought against them as well as complaints made by the Applicant against members of the BPS related to that criminal case. The BPS decided that the records were exempt under sections 4(1)(b) (application of the Act) and 30(1)(a) (operations of public authorities).

During the review, the Applicant withdrew their challenge for records refused under section 4(1)(b). The Information Commissioner has concluded that the BPS was justified in relying on section 30(1)(a) to withhold the remaining records responsive to the PATI request. The Information Commissioner has also concluded that the BPS did not meet the reasonable search requirements in section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations 2014, but this was remedied during this review.

Relevant statutory provisions

Public Access to Information Act 2010: section 12(2)(b) (access to records); section 30(1)(a) (operations of public authorities).

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

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

Background

1. On 22 August 2023, the Applicant made a public access to information (**PATI**) request to the Bermuda Police Service (**BPS**), asking for records relating to a criminal case, criminal complaints, and a conduct complaint that was made against a senior officer. The request sought:
 - a. All information and records relating to a concluded criminal case, including all information and records made following the case's conclusion and a conduct complaint made against a member of the BPS. The Applicant stated that "all communication" should include, but not be limited to, copies of witness statements, emails, notes, reports, requests for information and information received by the BPS or any consultant employee of the BPS relating to the event (**item 1**) (**criminal case and public conduct complaint**).

- b. All information and records relating to a criminal complaint lodged against two BPS officers (**item 2) (first criminal complaint)**).
 - c. All information and records relating to a criminal complaint lodged against one BPS officer (**item 3) (second criminal complaint)**).
- 2. Because the conduct complaint in item 1 was made by a member of the public, as opposed to an internal conduct complaint raised by another member of the BPS, the Police Complaints Authority (**PCA**) would make the final determination on the complaint under the Police Complaints Authority Act 1998 (**PCA Act**).¹ The PCA Act empowers to the PCA to direct and oversee the BPS's investigation of public conduct complaints as well as to conduct its own investigations.
- 3. On 18 October 2023, the BPS issued an initial decision. It granted access to eleven records responsive to the PATI request, which were disclosed to the Applicant. The BPS stated that there were no records responsive to some parts of the PATI request. The BPS denied access to the remainder of records responsive to the PATI request in accordance with section 4(1)(b)(v) of the PATI Act 2010. The BPS confirmed that records existed for an active disciplinary investigation against a senior officer related to the conduct complaint against them, but access to the records was denied in accordance with section 30(1)(a).
- 4. On 23 October 2023, the Applicant asked for an internal review.
- 5. On 1 December 2023, the BPS issued an internal review decision, affirming the refusal based on sections 4(1)(b)(v) and 30(1)(a).
- 6. On 12 December 2023, the Applicant made a timely application for an independent review by the Information Commissioner, challenging the BPS's reliance on sections 4(1)(b)(v) and 30(1)(a).

Investigation

- 7. The ICO accepted the application as valid on 2 January 2024, on the basis that the Applicant had made a PATI request to a public authority and had asked that public

¹ To learn more, see the PCA's website, pca.bm.

authority for an internal review. On 7 January 2024, the Applicant clarified the issues they wanted the Information Commissioner to review.

8. The Applicant stated that the BPS had not disclosed email correspondence exchanged within the BPS concerning the concluded criminal matter for item 1. The Applicant further stated that the BPS had not provided an adequate response to some parts of the PATI request. Based on this clarification, the ICO included an issue under section 12(2) of the PATI Act and regulation 5 of the PATI Regulations 2014 about the accuracy and completeness of the BPS's response to the PATI request, including the reasonableness of its search. The ICO sent an updated validation letter on 8 January 2024, and the issues were confirmed by the Applicant.
9. During validation, 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 public authority's reliance on the provisions.
10. The ICO notified the BPS of the valid application on 16 January 2024 and asked for the responsive records. The BPS submitted withheld records on 5 February 2024, 21 of which were considered as under review.²
11. As required by section 47(4) of the PATI Act, the ICO invited the parties to make representations to the Information Commissioner. The BPS made formal submissions on 1 May 2024 and the Applicant on 2 May 2024.
12. In their submissions, the Applicant withdrew their challenge to the records denied under section 4(1)(b) because they related to the constitutional or statutory functions of the Attorney General or the Director of Public Prosecutions. This included all records responsive to item 2. This left a total of 5 records under review from those originally provided by the BPS. For the remaining withheld records, the Applicant made more submissions and confirmed that their correspondence to the ICO on 12 December 2023 and 7 January 2024 should be included with their submissions.

² The records were numbered 1-18 by the BPS. Where there were attachments to emails, these records were separately numbered by the ICO, for example as records 10a and 10b. A total of 25 records were listed in the record schedule and submitted to the ICO. Four records were removed from this review as duplicates.

13. On 10 May 2024, the ICO met with the BPS to inspect other records held by the BPS and to discuss the review. On 13 May 2024, the BPS provided the ICO with additional records responsive to items 1 and 2.
14. During the 10 May 2024 meeting with the ICO, the BPS explained that there was nothing in the search results contained in the PATI folders for this review that was received from officers who were involved with the criminal case.
15. Upon reviewing the records, the ICO identified various gaps in the search. In particular, the BPS had not submitted any records responsive to item 3 of the PATI request, and it did not appear that the officer in the BPS's Professional Standards Department (**PSD**) assigned to investigate the conduct complaint against the senior officer had been asked to provide records to the Information Officer. The ICO then sought any additional records held in response to items 1 and 3.
16. On 22 July 2024, the ICO received 24 additional records related to items 1 and 3. The BPS clarified the disposition of the second criminal complaint for item 3 of the PATI request, and this was confirmed in record 25. Twelve of the additional records were non-responsive because they post-dated the PATI request (made on 22 August 2023).³ Whilst non-responsive, the records provided useful context in this review.
17. On 8 November 2024, the Applicant confirmed that they were not seeking records they already had a copy of (e.g. correspondence sent from or received by the Applicant).
18. After removing all duplicate, out-of-scope and no-longer-at-issue records, as well as considering the newly located records after the BPS conducted additional searches, this Decision has considered 15 records in total.⁴

Information Commissioner's analysis and findings

19. The Information Commissioner has considered all relevant evidence, being satisfied that no matter of relevance has been overlooked.
 20. The Information Commissioner strives to provide as full a public explanation of her decision and reasoning as possible. Section 53(2) of the PATI Act, however, prevents
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³ These were records 28-32 and 35-40.

⁴ The 15 records are labelled as records 11b, 13b, 16a, 17, 18, 20-27, 33 and 34.

discussion of the withheld records. As a result, the analysis below cannot be as detailed as otherwise preferred.

Reasonable search – section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations

21. Section 12(2)(b) of the PATI Act requires public authorities to make every reasonable effort to respond to PATI requests completely and accurately. Regulation 5 of the PATI Regulations requires the public authority to make a reasonable effort to locate records responsive to the request. A public authority is required to document its efforts if it has been unable to locate records. Read together, these provisions require public authorities to conduct a reasonable search in response to a PATI request.
22. In cases where the reasonableness of a public authority's search is in question, the Information Commissioner's task is to assess whether such search was reasonable in accordance with the provisions of the PATI Act and Regulations. It is not the Commissioner's role to assess whether a public authority should or should not hold a record as a matter good public administration.
23. In determining whether a public authority's search was reasonable, the Information Commissioner considers the following:
 - [1] the quality of the public authority's analysis of the 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.
24. The public authority bears the burden to establish that the search conducted to locate records responsive to a PATI request was reasonable.⁵

Public authority's submissions

25. The BPS did not provide specific submissions in response to section 12(2)(b). However, during a meeting with the ICO, representations were made by the BPS that it was the BPS's second time dealing with this request. The BPS advised that all responsive records were sent by the officer in charge of the criminal case referred to in item 1. The BPS also showed the ICO its electronic email folder sent by the officer who had been assigned as

⁵ See [Decision 04/2017, Department of Health](#), at paragraphs 37-49, and more recently [Decision 17/2024, Ministry of National Security Headquarters](#), at paragraphs 18-22.

the appropriate authority in relation to the conduct complaint against the senior officer referred to in item 1.

26. Further, the BPS showed that the records responsive to items 1 and 2 of the PATI request were stored electronically in Outlook and on a specific drive. Of these, the ICO confirmed receipt of one file that consisted of the records already sent to the ICO on 21 February 2024. The BPS also showed the ICO a set of records that the BPS determined was not responsive to the request. The ICO received copies of these records for examination.
27. Following a request by the ICO, the BPS officer assigned to investigate the various complaints provided the ICO with additional records.

Applicant's submissions

Item 1 (criminal case and public conduct complaint)

28. The Applicant submitted that they believed the BPS held internal email correspondence, notes and reports, which were not already disclosed for their PATI request.
29. The Applicant did not accept that all records related to BPS officers named in item 1 had been disclosed to the Applicant. The Applicant submitted that there was likely to be additional email correspondence.
30. The Applicant stated that, while they accepted there may be no records from the persons they had named in item 1, they did not accept that there were no emails, reports and notes concerning the various matters raised in the PATI request. The Applicant stated that there would have been documents and correspondence to the PSD about assigning an appropriate authority for the conduct complaint, as well as correspondence relating to the appropriate authority's decision, e.g. correspondence sent to witnesses seeking a statement from them. The Applicant submitted that the appropriate authority would have created a log and matrix related to their decision on the conduct complaint.

Items 2 and 3 (first and second criminal complaints)

31. The Applicant further stated in their application to the Information Commissioner that the BPS's response to items 2 and 3 did not answer their request for information. The BPS simply stated that the Director of Public Prosecutions had chosen not to move forward with the criminal prosecution against the BPS officers. The Applicant stated that they were seeking a fulsome response to items 2 and 3 of the PATI request and disclosure of the responsive records.

Discussion

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

Item 1 (criminal case and public conduct complaint)

32. When the BPS issued the initial decision, the BPS disclosed to the Applicant records that related to the criminal case.
33. The withheld records initially provided to the ICO included records related to the concluded criminal case. The withheld records also included ones related to the conduct complaint made against specific BPS officers arising out of the criminal matter. This included records related to the appointment of an appropriate authority, the assessments of conduct completed under the Conduct Orders, and internal correspondence related to those conduct assessments.
34. Further, the disclosed and withheld records involved communications sent to and from all the individuals named by the Applicant, indicating that the BPS understood who the relevant individuals were.
35. The BPS also understood the request to be asking for more than emails. The disclosed and withheld records included several different types of records listed in the PATI request.
36. The BPS's analysis of item 1 of the request was adequate.

Item 2 (first criminal complaint)

37. The BPS's analysis of item 2 of the PATI request was adequate. The first criminal complaint involved two officers. In the withheld records submitted to the ICO, the BPS included correspondence in support of their analysis.

Item 3 (second criminal complaint)

38. Initially, the BPS did not appear to have understood that item 3 sought records concerning a criminal complaint against the one police officer. The initial decision explained that the Director of Public Prosecutions decided that no criminal prosecution should ensue, but the relevant withheld records provided to the ICO related to the criminal complaint referenced in item 2 of the PATI request. Nothing in the disclosed or withheld records and nothing in the initial or internal review decisions indicated that the BPS understood the Applicant to be seeking records related to the separate criminal complaint against one officer. At the time of the initial decision and internal review decision, it appeared that no search was conducted for records responsive to item 3.

39. After further communications between the ICO and the BPS, the BPS understood the request to be asking for all information pertaining to both criminal complaints. The BPS explained the disposition of the criminal complaint, and this was later evidenced by the BPS in the newly located responsive records.
40. Although it appears that the BPS had not adequately understood item 3 at the time of the PATI request, the BPS amended their understanding during this review and provided additional records responsive to item 3.

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

41. The BPS's Information Officer obtained the entire relevant criminal case file for the BPS case from the lead inspector, which indicated that, for this part of item 1, the correct electronic subject files were identified. The Information Officer had also asked other relevant officers to conduct searches of their records, and records containing their correspondence were sent to the ICO. Similarly, electronic files were searched of the appropriate authority for the conduct complaint in item 1.
42. During this review, an additional search of the files held by the investigator in the PSD, was conducted. This located more responsive records.
43. Although not initially adequate for some items, the BPS's correspondence and submissions showed that it has filled the gaps in the scope of its search. As a result, the scope of the BPS's search for items 1, 2 and 3 is now adequate.

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

44. During this review, the searches for responsive records were conducted by officers within the BPS who had direct knowledge and communication on the subject and who had full access to the relevant locations of the records. The BPS remedied any original deficiencies in the rigour and efficiency of the search during this review.

Conclusion

45. The Information Commissioner is satisfied that, although a reasonable search had not been conducted by the BPS during the processing of the PATI request, during this review, the BPS has conducted a reasonable search to meet the requirements of section 12(2)(b).

Prejudice to the effectiveness of investigations – section 30(1)(a)

46. Public authorities are justified to refuse to disclose a record under section 30(1)(a) of the PATI Act if disclosure could reasonably be expected to prejudice the effectiveness of

tests, examinations, investigations, inquiries or audits conducted by, or on behalf of, the public authority, or the procedures or methods used to conduct them.

47. In the absence of a definition of 'investigation' or 'procedures' in the PATI Act and the Interpretation Act 1951, these terms are to be read in their plain, ordinary meaning. 'Investigation' is defined as "the action of investigating something or someone", and 'investigate' means "to carry out a systematic or formal inquiry to discover and examine the facts of (an incident, allegation, etc.) so as to establish the truth".⁶ 'Procedures' is defined as "an established or official way of doing something" or "a series of actions conducted in a certain order or manner".
48. The exemption may apply to either ongoing or future investigations, as well as the procedures or methods used to conduct the relevant investigation. The relevant investigation must be conducted by or on behalf of the public authority concerned.
49. For the purposes of section 30(1)(a), prejudice should be understood as a harm that is actual, real and significant to the effectiveness of the investigation. Public authorities must be able to show that the effect caused by disclosure would be negative or detrimental in a way that undermines the effectiveness of the investigation.
50. As the Information Commissioner explained in [Decision 27/2019](#), [Bermuda Health Council](#), 'effectiveness' in section 30(1)(a) refers to the ability of the investigation to produce or lead to a result of some kind. If, after disclosure, the investigation could still be used to achieve its purposes, section 30(1)(a) may not be applicable.
51. To appropriately rely on the exemption in section 30(1)(a), public authorities should also be able to show that disclosure 'could reasonably be expected to' cause the harm. Specifically, a public authority must be able to show that their expectations on the negative impact of disclosure are likely, plausible or possible based on real and substantial facts.
52. The exemption in section 30(1)(a) is subject to the public interest test. This means that, if the exemption is engaged, the record must still be disclosed if the balance of the public interest favours disclosure, as set out in section 21 of the PATI Act.

⁶ See Oxford Dictionary of English (3rd ed. 2010).

53. In sum, to appropriately withhold a record under section 30(1)(a), a public authority must ask:

[1] What is the relevant investigation, or the procedures or methods employed to conduct it?

[2] How can disclosure cause prejudice to the effectiveness of the relevant investigation, or the procedures or methods used to conduct it, describing the circumstances or events that can lead to the prejudice?

[3] Could the prejudice reasonably be expected to occur under the circumstances?

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

54. 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)(a) to deny access to the record.

Public authority's submissions

55. The BPS confirmed to the Applicant that records existed in relation to an active disciplinary investigation. It submitted that it would be highly irregular and detrimental to the fairness of the procedure to release information to the complainant of a matter which was under investigation.

56. The BPS submitted that the relevant investigation was an ongoing disciplinary investigation under the Conduct Orders. 'Disciplinary investigation' refers to both an investigation conducted under Part 3 of the Conduct Orders and a misconduct proceeding under Part 4, which include misconduct hearings and misconduct meetings.⁷

57. The BPS also explained that this refers to any future disciplinary investigations conducted by the PSD. The disciplinary investigations, which are aimed at investigating any potential breach of the BPS's professional behaviour standards, fall within the definition of an investigation for purposes of section 30(1)(a) of the PATI Act and are conducted by a public authority, i.e. the BPS.

⁷ See Order 2 of the Conduct Orders for definitions of misconduct proceedings, hearings and meetings.

58. The BPS asserted that disclosure could interfere with the PSD investigator's ability to conduct a fair investigation. The BPS stated that disclosure would open the door for legal submissions based on fairness, procedural irregularities, a right to a fair trial under Article 6 of the European Convention on Human Rights, and, ultimately, a stay of proceedings for an abuse of process or an opening of the doorway for other legal arguments.
59. The BPS further submitted that the effectiveness of the procedures under the Conduct Orders were dependent on parties' adherence to them. This effectiveness could reasonably have been expected to be prejudiced by disclosure of the records responsive to the PATI request. The BPS stated that, under the circumstances of this application, disclosure could reasonably have been expected to undermine the entire disciplinary investigation, bringing it to an end before a decision were made as to whether there was a case to answer.
60. Finally, the BPS weighed the balance of the public interest. The BPS asserted that the procedures in the Conduct Orders balance the need for a fair process with the BPS's need to protect its other interests outlined in the Conduct Orders, such as safeguarding ongoing or pending disciplinary investigations or other public interests. Inherent in the procedures under the Conduct Orders was a need to protect broader public interests.
61. Overall, the BPS maintained that disclosure of the records could reasonably have been expected to prejudice the effectiveness of the ongoing investigation conducted by the PSD into the allegations against the officer. Disclosure could reasonably be expected to interfere with the PSD investigator's ability to conduct a fair investigation for both parties.
62. The BPS acknowledged that transparency and accountability, as well as ensuring justice and fair treatment, were public interest factors in favour of disclosing the records.
63. In concluding that the public interest weighed against disclosing the records, the BPS considered these points.
 - a. The records were exempt under section 30 of the PATI Act.
 - b. Disclosure would personally benefit the Applicant, and not the public. It was therefore the BPS's position that disclosure would not further the purposes set out in section 2 of the PATI Act.
 - c. The Applicant's personal interest to access the records was due to an internal misconduct investigation, which remained ongoing.

Applicant's submissions

64. The Applicant submitted that the assertion that the internal investigation was ongoing was void of the truth. First, the Applicant highlighted that their request was made after the BPS concluded its investigation under the Conduct Orders.
65. Second, the Applicant submitted that section 30(1)(a) was no longer justified because the investigations by the BPS and the PCA were ended once the senior officer was no longer with the BPS. Therefore, no current obstacle prevented the disclosure of the remaining records.
66. The Applicant noted the following public interest factors in favour of disclosure, which were protected through regulation 2 of the PATI Regulations:
 - a. deterring or revealing wrongdoing or maladministration;
 - b. revealing untrue, incomplete or misleading information or acts of a public authority; and
 - c. promoting transparency and accountability, upholding standards of integrity, ensuring justice and fair treatment, and ensuring fairness in relation to applications or complaints.

Discussion

67. Section 30(1)(a) is considered for records 11b, 13b, 16a, 17, 18, 20-27, 33 and 34.

[1] What was the relevant investigation, or the procedures or methods employed to conduct it?

68. The relevant investigation was an active disciplinary investigation against a senior officer under the PCA Act and Conduct Orders into an allegation of misconduct or gross misconduct. The Information Commissioner has previously accepted that a disciplinary investigation under the Conduct Orders falls within the definition of an investigation for the purposes of section 30(1)(a) of the PATI Act and that the Conduct Orders set out the procedures or methods employed to conduct such investigation.⁸ This is the first Information Commissioner's decision to consider a proceeding under the PCA Act.

⁸ See [Decision 17/2023](#), [Office of the Governor](#) and [Decision 11/2024](#), [Bermuda Police Service](#).

69. In this case, the complaint was originally made to the PCA and referred to the PSD for investigation under the Conduct Orders. As noted above, when a complaint is made to the PCA, it is considered a public complaint and the PCA has powers regarding the investigation of the complaint. The relevant procedures or methods employed to conduct the investigation are set out under both the PCA Act and the Conduct Orders.

[2] How could disclosure have caused prejudice to the effectiveness of the relevant investigation, or the procedures or methods used to conduct it?

Prejudice to the effectiveness of the disciplinary investigation

70. The Applicant was correct that the Information Commissioner has previously found that once an investigation under the Conduct Orders has concluded or been discontinued, no prejudice to the effectiveness of that proceeding could occur, even when the investigation does not result in a final determination (as occurred here).⁹ The Applicant's argument was misplaced, however, on whether the relevant disciplinary investigation was concluded at the time of the PATI request in this review. This was due in part to the timing of the investigation and the PATI request and, in part, to the nature of the process for investigating public conduct complaints under the PCA Act.
71. The PATI request in this review was made on 22 August 2023. While the BPS concluded its stage of the investigation prior to August 2023, this did not mean that the entire disciplinary investigation was finished. Because this was a 'public complaint', i.e. a complaint about a BPS officer made by a member of the public, it was subject to the PCA Act. As a result, in June 2023, the BPS's investigation documents were sent to the PCA for its review pursuant to section 14 of the PCA Act and the PCA's determination under section 21 of the PCA Act. The PCA's determination was pending when the PATI request was made. The PCA subsequently recommended further investigation, meaning that the disciplinary investigation was not complete at the time of the PATI request, or even at the time of the BPS's internal review decision on 1 December 2023.
72. In early 2024, the Applicant also received notice from the BPS that the officer was no longer with the BPS and that, as a result, the disciplinary proceedings under the Conduct Orders could not be concluded. This was after the BPS's decisions on the PATI request and therefore did not impact the BPS's reliance on section 30(1)(a) here.

⁹ See [Decision 17/2023](#), [Office of the Governor](#), at paragraph 42.

73. Considering the ongoing nature of the investigation at the time the BPS was processing the PATI request, the Information Commissioner agrees with the arguments by the BPS that public disclosure of investigation records could have prejudiced the process by creating a risk of challenges to the fairness of the proceeding, procedural irregularities, or a challenge to the right to a fair trial under Article 6 of the European Convention on Human Rights. Such issues might lead to an actual stay of proceedings while these matters were being resolved or could have resulted in diverted time and resources within the existing proceeding to address and remedy these concerns.

Prejudice to the effectiveness of procedures under the PCA Act and Conduct Orders

74. In [Decision 15/2020](#), [Bermuda Police Service](#), at paragraphs 38-48, the Information Commissioner found that disclosure of records related to an ongoing investigation under the Conduct Orders could cause prejudice to the effectiveness of the procedures or methods prescribed by the Conduct Orders. That same reasoning applied here with respect to the procedures under the Conduct Orders.
75. Here, the relevant procedures encompass those under the PCA Act, which has provisions related to the disclosure of information about public complaints.
76. According to the PCA Act and the Conduct Orders, for example, a complainant or interested party may be provided with certain documents and information at certain times. Specifically, sections 10(2), 12(3) and 17(1) of the PCA Act provide that the PCA shall inform the complainant of the procedure it proposes to adopt regarding the investigation of a complaint, a decision to take no action or no further action on a complaint and the reasons for that decision and, where it is to proceed with an investigation, its intention to investigate a complaint. Similarly, Order 3 of the Conduct Orders provides that the appropriate authority must provide any interested person (defined to include a complainant) “with all such information as to keep him properly informed, subject to the harm test, while the investigation is being carried out”.
77. The PCA Act and the Conduct Orders balance an interested person’s right to obtain documents and information against the BPS’s need to maintain the confidentiality of certain information, either temporarily or permanently. As part of the procedures for disciplinary investigations, the PCA Act and the Conduct Orders afford the appropriate authority and the investigator the discretion to determine whether certain information or documents should not be provided to an interested person during a disciplinary investigation. The harm test in Order 4(a), for example, provides that documents may not be provided to an interested person where the appropriate authority considers that non-disclosure is necessary “for the purpose of preventing the premature or

inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings”.

78. Given this framework, the disclosure of the responsive records could have prejudiced the effectiveness of the procedures under the PCA Act and the Conduct Orders to conduct disciplinary investigations.

[3] Could the prejudice reasonably have been expected to occur under the circumstances?

79. The Information Commissioner accepts the BPS’s submissions that the effectiveness of the procedures used to conduct disciplinary investigations under the PCA Act and Conduct Orders are dependent upon parties’ adherence to them and upholding the balance that exists within the frameworks between transparency on the one hand and the fairness concerns discussed above and the BPS’s need to protect other interests such as safeguarding other pending disciplinary or criminal investigations on the other hand. As explained above, disclosure would allow one party to circumvent the provisions of the PCA Act and the Conduct Orders and would create a significant risk of prejudice.

80. Under the circumstances this review, disclosure also could reasonably have been expected to undermine, if not eliminate, the decision-making authority given to the PCA, the BPS investigator and the appropriate authority.

81. Because disclosure of the responsive records could reasonably have been expected to prejudice the effectiveness of the procedures under the PCA Act and the Conduct Orders, the exemption was engaged.

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

82. As an initial matter, the Information Commissioner notes that the fact that records fall within an exemption is not a factor for consideration when balancing the public interest, as claimed by the BPS. A public authority only needs to consider the balance of the public interest once it has decided that the exemption is engaged. It then must consider whether, despite the application of the exemption, the balance of other interests require disclosure.

83. Disclosure would have been important to promote transparency and accountability. Contrary to the BPS’s assertion, disclosure would have benefitted more than the Applicant alone. It would have benefitted the public. The public has an interest in knowing of alleged wrongdoings of a high-ranking officer. Fuller transparency concerning

such allegations and the determinations of the PCA promotes accountability within the BPS, particularly when leaving an organisation prevents a final decision of the allegations.

84. Whilst there were public interest factors in favour of disclosure, there were several strong public interest factors that favoured maintaining the exemption. The most compelling was the fact that it would have been unfair and an invasion of personal privacy to disclose unfounded allegations and other preliminary details of a gross misconduct investigation that was never concluded. Such disclosure would likely have fuelled speculation and rumour. It also could have resulted in unwarranted attention being directed towards the senior officer, those who had made accusations against the senior officer, and others related to the investigation. Therefore, any public interest served by the disclosure of records in this case was lessened. The public also had a strong interest in maintaining the fairness of administrative processes and avoiding unjust harm to individuals.
85. Finally, the public had a strong interest in the orderly administration of administrative processes under the PCA Act and the Conduct Orders. The disclosure of the BPS's findings provided to the PCA, in this instance, would have undermined this interest. Having carefully reviewed the withheld records, the Information Commissioner also notes that it did not in any way suggest or reveal any wrongdoing or maladministration related to the conduct of investigations or the decision to discontinue the investigation once the senior officer was no longer with the BPS. It is worth noting that the BPS and the PCA informed the relevant interested parties that the PCA had directed further investigation be done (as they were not satisfied with the BPS's original investigation outcome), but that, due to the senior officer no longer being employed with the BPS, the investigation could not have been progressed. In this manner, the existing disclosures by the PCA and the BPS (consistent with the framework and procedures under the PCA Act and Conduct Orders) furthered some of the most important public interests in accountability.
86. On balance, the public interest did not require disclosure of the withheld records.

Conclusion

87. The Information Commissioner is satisfied that the BPS was justified to rely on section 30(1)(a) to deny access to the responsive records.

Conclusions

88. In sum, the Information Commissioner is not satisfied that the BPS had initially conducted a reasonable search for records responsive to items 1 and 3 of the PATI request, as required by section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations, but

is satisfied that the BPS's additional searches during this review rectified the deficiencies in its search. Further, the Information Commissioner is satisfied that the BPS justified its reliance on section 30(1)(a) of the PATI Act to have refused access to records 11b, 13b, 16a, 17, 18, 20-27, 33 and 34.

Decision

The Information Commissioner finds that the Bermuda Police Service (**BPS**) had not conducted a reasonable search for records responsive to parts of the request under the Public Access to Information (**PATI**) Act 2010, as required by section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations 2014. The Information Commissioner further finds that the BPS was justified in denying access to the records under section 30(1)(a) of the PATI Act. Finally, the Information Commissioner finds that the BPS remedied the deficiencies in its search during this review and, therefore, does not require the BPS to take any further steps in relation to this PATI request.

In accordance with section 48 of the PATI Act, the Information Commissioner affirms the BPS's internal review decision.

Judicial Review

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
31 December 2024

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Access to records

- 12 ...
- (2) Public authorities shall make every reasonable effort to—
- ...
- (b) respond to requests completely, accurately and in a timely manner.
- ...

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—
- (a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of the public authority concerned or the procedures or methods employed for the conduct of those tests, examinations, investigations, inquiries or audits;
- ...
- (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.

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