

## Decision Notice

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### Decision 11/2025: Bermuda Police Service

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#### Telephone call recordings

**Reference no:** 2024024

**Decision date:** 28 March 2025

## 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 any recordings of certain telephone discussions between the Applicant and specified officers. The BPS administratively denied the request under section 16(1)(a) of the PATI Act, on the basis that no records existed. In this Decision, the Deputy Information Commissioner has affirmed the BPS's administrative denial of the PATI request; further action is not required.

## Relevant statutory provisions

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

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 7 March 2024, the Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Police Service (**BPS**), asking for disclosure of all records relating to any recordings of three telephone discussions between the Applicant and specified officers held on a particular date. Each telephone discussion related to the Applicant's separate request for a record of their personal information, which they were informed they could access without a fee through a PATI request.
2. When making their PATI request on 7 March 2024, the Applicant copied in the Commissioner of Police as the BPS's Head of Authority, stating they were concerned about a potential conflict of interest because the telephone call recordings they were asking for related to the BPS's Information Officer, who was responsible for handling PATI requests.
3. On 12 March 2024, the BPS issued an initial decision to the Applicant, explaining that the records they had requested did not exist, because only calls made in and out of the BPS's control room were recorded. The BPS acknowledged that, due to the Applicant's concern, the Head of Authority had been involved in reaching the BPS's decision on their PATI request. The BPS's letter also informed the Applicant that any review of the BPS's decision would lie with the Information Commissioner, and the Applicant's deadline to request a review was six weeks.

4. On 1 May 2024, the Applicant asked for an Information Commissioner’s review, copying in the BPS in their email.

## Investigation

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5. The Information Commissioner’s Office (**ICO**) accepted the application as valid, on the basis that the Applicant had made a PATI request to a public authority and (as later clarified) had received an internal review decision from the public authority. It was noted for the Applicant that the Information Commissioner had exercised discretion in accepting their application past the statutory deadline, under section 45(3) of the PATI Act.
6. On 29 May 2024, the ICO notified the BPS of the valid application, explaining that the Commissioner wished for the BPS’s Head of Authority to affirm that they were the decision maker of its initial decision of 12 March 2024. This would have allowed the Commissioner to treat the application as properly referred to them under section 44 of the PATI Act.<sup>1</sup>
7. In response to the ICO’s notice, on 3 June 2024, the BPS issued a fresh decision to the Applicant in a letter signed by the Head of Authority. This decision upheld the BPS’s initial reliance on section 16(1)(a).
8. The ICO re-confirmed with the Applicant that the Commissioner would move ahead with reviewing the BPS’s internal review decision as issued on 3 June 2024. Separately, the BPS also explained to the ICO its approach to addressing the Applicant’s concern about a potential conflict of interest.
9. Both parties were informed by the ICO that, during validation, the Commissioner had decided to proceed with a review under section 47, without first attempting resolution under section 46 as an initial approach to resolve the application.
10. As required by section 47(4) of the PATI Act, on 20 June 2024, the ICO invited the parties to make representations to the Commissioner. The BPS made formal submissions on 28 June 2024, including answers to the ICO’s specific investigation questions. The Applicant did not make submissions in response to the ICO’s formal invitation.

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<sup>1</sup> Section 44 allows a public authority to refer any request for an internal review of an initial decision made by a head of authority directly to the Information Commissioner, for the Commissioner to proceed with a review under section 45 of the PATI Act. When this happens, the internal review stage is effectively skipped.

## Deputy Information Commissioner's analysis and findings

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11. The Deputy Information Commissioner has considered all relevant evidence, being satisfied that no matter of relevance has been overlooked unless otherwise noted.<sup>2</sup>

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

12. 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.
13. 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.
14. When a public authority denies a PATI request under section 16(1)(a) because a record does not exist or cannot be found, the Commissioner's review does not determine to a point of certainty if a record exists or can no longer be located. Rather, the Commissioner is required to assess whether the public authority took all reasonable steps to find a record. Section 16(1)(a) also does not concern whether a public authority should hold a record as a matter of good public administration.
15. In determining whether a public authority's search was reasonable, the Commissioner will consider the quality of the public authority's analysis of the PATI request, the scope of the search that it decided to make on the basis of that analysis, and the rigour and efficiency with which the search was then conducted. The specific circumstances in each case will inform the Information Commissioner's assessment.
16. Finally, the public authority bears the burden to establish, on the balance of probabilities, that responsive records did not exist or could not be found after all reasonable steps had been taken to find them.<sup>3</sup>

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<sup>2</sup> The Information Commissioner has delegated to the Deputy Information Commissioner, by virtue of section 52A, the function of completing reviews and issuing decisions under section 47(6) of the PATI Act, for a defined period; a schedule of delegation is posted on [ico.bm](http://ico.bm). This is the first Decision being issued under delegated authority.

<sup>3</sup> See [Decision 04/2017](#), [Department of Health](#), at paras. 37-49, and more recently [Decision 01/2023](#), [Ministry of Legal Affairs and Constitutional Reform Headquarters](#), at paras. 30-35.

*Public authority's submissions*

17. The BPS submitted that its understanding of the PATI request was a literal interpretation of the written request. Meaning, the BPS understood that the Applicant was seeking audio recordings of three separate telephone conversations the Applicant had with different BPS officers on a specified date. As context, the BPS submitted an email thread between the Applicant and the officers named in the PATI request, which explained the Applicant's separate, prior request seeking access to a record of their personal information.
18. The BPS explained that, as a matter of fact, no records existed because the BPS only recorded '911' calls through its control room. The BPS's 911 call recordings were stored for playback if needed and sometimes were used as evidence in court. The BPS further explained that its desk phones had capacity to store up to 100 missed, placed or received calls and that no call logs or audio files from the telephone extensions assigned to the officers named in the PATI request were recorded on the BPS's server.
19. To support what was explained to the Applicant in its initial decision, the BPS submitted an internal email thread where the responsible unit affirmed this information. The BPS also noted that, beyond standard BPS procedure, there were no formal policies governing these practices.

*Applicant's submissions*

20. As noted above, the Applicant did not make submissions in response to the ICO's formal invitation.

*Discussion*

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

21. The Deputy Information Commissioner is satisfied that, based on the BPS's submissions, its analysis of the PATI request was accurate and complete. The BPS properly understood that the Applicant was seeking access to any audio recordings of certain telephone conversations as described.

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

22. The Deputy Information Commissioner accepts that, when initially responding to the PATI request, it was reasonable for the BPS to rely on the personal working knowledge of the BPS's Information Officer and Head of Authority about the BPS's telephone call recording practices. During this review, in support of their personal working knowledge, the BPS made further reasonable efforts to confirm through the BPS's technical unit whether the

BPS continued to hold a call log for the named officers' telephone extensions covering the relevant date and if any audio recordings existed. This confirmation was shared promptly with the ICO.

23. In this sense, the Deputy Information Commissioner is satisfied that the BPS planned a comprehensive search of locations that would have held records responsive to the PATI request, if they were to exist.

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

24. For similar reasons stated above, the Deputy Information Commissioner is satisfied that the rigour and efficiency of the BPS's search were adequate. No aspect of the BPS's submissions or its supporting documents raised any reason to probe further during the Commissioner's review. The Deputy Information Commissioner finds no apparent inconsistency or other basis to dispute the BPS's submissions.
25. Given that the three calls relevant to the PATI request were not made through the BPS's control room, where a recording likely would have been created, it is accepted that responsive records never existed. The BPS had every reasonable basis to administratively deny the PATI request, by relying on the personal working knowledge of the BPS's Information Officer, Head of Authority and a responsible technical officer for details about the BPS's telephone call recording and storage practices.

#### *Conclusion*

26. The Deputy Information Commissioner has concluded that the BPS was justified in administratively denying the PATI request by relying on section 16(1)(a) of the PATI Act.

## Decision

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The Deputy Information Commissioner finds that the Bermuda Police Service (**BPS**) was justified in relying on section 16(1)(a) of the Public Access to Information (**PATI**) Act 2010 to administratively deny the PATI request in full. In accordance with section 48 of the PATI Act, the Deputy Information Commissioner affirms the internal review decision by the BPS and does not require the BPS to take any further action in respect of this Decision.

## Judicial Review

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The Applicant, the Bermuda Police Service, or any person aggrieved by this Decision have 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.

LaKai Dill  
Deputy Information Commissioner  
28 March 2025

## 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 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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