



## Decision Notice

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### **Decision 01/2026: Bermuda Police Service**

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**Records relating to an internal investigation**

**Review reference no.: 2024076**

**Decision date: 6 February 2026**

## Summary

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In this Decision, the Applicant had made an access request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Police Service (**BPS**) for records related to an internal investigation. The BPS refused to disclose whether any records existed, citing section 38 of the PATI Act. The BPS's reliance on section 38 was made on the basis that the records themselves, if they existed or were to exist, would be exempt from disclosure under sections 23(1) (personal information) and 30(1)(a) (prejudice to investigations).

On concluding an external review, the Information Commissioner has found that the BPS was justified in refusing to disclose the existence or non-existence of records, because, if they did exist, they would be exempt from disclosure under section 23 of the PATI Act as they would contain personal information, and the public interest did not favour disclosure of the existence of any such records.

The Information Commissioner has affirmed the decision of the BPS to refuse to disclose the existence, or non-existence, of notional records which might be responsive to this request.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 21 (public interest test); section 23 (personal information); section 24 (definition of personal information); section 38 (existence or non-existence of records)

## Background

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1. On 12 July 2024, the Applicant made a public access to information (**PATI**) request to the Bermuda Police Service (**BPS**), asking for records related to an internal investigation of a named individual. The PATI request was specifically worded to seek records related to certain BPS internal activities surrounding the named individual based on five different descriptions. The express wording of the PATI request cannot be replicated in this Decision because, even with sanitisation or redactions, it could reveal personal or sensitive information.
2. On 15 August 2024, the BPS issued its initial decision. It explained that the records responsive to the PATI request, if they existed or were to exist, would be exempt from disclosure under sections 23(1) and 30(1)(a) and, therefore, the BPS refused to disclose whether or not records responsive to the PATI request existed under section 38 of the PATI

Act. The BPS further explained that it was not in the public interest to disclose the existence or non-existence of the records.

3. On 15 August 2024, the Applicant asked for an internal review.
4. On 4 October 2024, the BPS issued an internal review decision, which upheld the initial decision on the basis of section 38.
5. On 7 October 2024, the Applicant asked for an external review by the Information Commissioner, to challenge the BPS's internal review decision.

## **Investigation**

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6. The Office of Information Commissioner (**ICO**) accepted the application as valid on 10 October 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.
7. The Applicant confirmed the issues under review on 11 October 2024 and asked the ICO to also consider whether the BPS's Head of Public Authority was in violation of section 43(2)(b)(i) of the PATI Act, by failing to provide the rationale for his decision when upholding the initial decision of the BPS's Information Officer.
8. The ICO confirmed to the Applicant that section 43(2)(b)(i) was accepted as a procedural matter in the review.
9. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application, because of the highly contentious relationship between the parties and because it was considered valuable for both parties to make submissions on the application of section 38.
10. The ICO notified the BPS of the valid application and the issues being reviewed, on 15 October 2024.
11. As required by section 47(4) of the PATI Act, on 6 May 2025, the parties were invited to make representations to the Information Commissioner.
12. On 6 May 2025, the Applicant made written submissions to the ICO.
13. The BPS did not make submissions during this review about its reliance on section 38; rather, the BPS relied upon the reasoning provided in its initial decision.
14. On 6 June 2025, the BPS was invited to provide written submissions on the process followed by the Head of Public Authority when making the internal review decision to address the

Applicant's concern that the Head of Public Authority failed to provide his rationale as required by section 43(2)(b)(i).

15. On 27 June 2025, the BPS's Head of Public Authority provided written submissions outlining his process for conducting the internal review and compliance with section 43(2)(b)(i).

## Analysis and findings

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16. The Information Commissioner is satisfied that the parties had reasonable opportunity to make representations and that there were no identified opportunities for resolution during the review. The Commissioner has considered all relevant facts, submissions and evidence provided by the parties, being satisfied that no matter of relevance was overlooked.
17. Any reference to records in this Decision is to notional records only, for the limited purpose of considering the exemptions. There should be no assumption that notionally responsive records to the PATI request exist, nor that there is any finding of fact that notionally responsive records exist.

### *Non-disclosure of existence of a record – section 38*

18. Section 38 of the PATI Act allows a public authority to refuse to disclose whether a record exists:

#### *Non-disclosure of existence of records*

*38 (1) A public authority may refuse to disclose whether a record exists if the record itself, if it exists or were to exist, is or would be an exempt record.*

*(2) The existence or non-existence of a record shall be disclosed if disclosure of it is in the public interest.*

[emphasis added]

19. The purpose of section 38 is to allow a public authority to respond to a PATI request in a way that neither confirms nor denies the existence of records responsive to a PATI request. This type of provision, commonly referred to as a 'neither confirm nor deny' (NCND) exemption, is commonly found in other commonwealth jurisdictions.<sup>1</sup>

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<sup>1</sup> Laws in other jurisdictions differ slightly from Bermuda law, as they typically limit when an NCND exemption can be applied, either by express statutory language or by limiting the range of exemptions which can be used to support the NCND exemption.

20. For the purpose of Bermuda law, a public authority must initially satisfy one of two requirements when relying on section 38.

Is exempt or would be exempt

21. First, under section 38(1), a public authority must show that any responsive record, if it exists or were to exist, is or would be an exempt record.

22. An 'exempt record' means 'a record that is exempt from disclosure under this [PATI] Act by virtue of a provision of Part 4'.<sup>2</sup> Accordingly, a public authority must first identify an exemption that is, or would be, applicable to any notionally responsive record and apply the statutory test for that exemption, including public interest considerations if required for the specified exemption.

23. The requirement in section 38(1) that the record 'is' or 'would be' exempt is a high standard to meet. Put simply, if a record were to exist, there is a high likelihood or probability it **would be** exempt from disclosure, or there is a high degree of certainty that it **is** exempt from disclosure.

24. To assess that a record is or would be an exempt record, it is expected that a public authority will, in most instances, conduct a search and examine any responsive records. However, in doing so, it may not always be appropriate for a public authority to reveal details of its search efforts or other procedural steps taken when responding to a PATI request if relying on section 38, because to do so might inadvertently reveal the existence of the record which they are intending to shield.

Public interest test

25. Second, if a public authority is satisfied that section 38(1) applies, it must then conduct a public interest analysis, as required by section 38(2). Because section 38(2) addresses whether the **disclosure of the existence** of any responsive record is in the public interest, this public interest analysis is limited to weighing why it is in the public interest to disclose or refuse to disclose the existence of any record. This is not looking at the public interest factors of whether the record, or its contents, should be disclosed because it is in the public interest. Rather, the decision maker must consider whether the public interest in knowing the record exists outweighs the reasons to keep its existence secret.

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<sup>2</sup> See section 3 (interpretation) of the PATI Act.

26. In sum, to justify reliance on section 38 to refuse to disclose the existence or non-existence of a record, a public authority must consider the following questions:<sup>3</sup>
  - [1] Which exemption in Part 4 applies to the record, if it exists or was to exist?
  - [2] If a record exists or was to exist, is it or would it be exempt from public disclosure by applying the requirements for the specified exemption?
  - [3] If the exemption is justified, is the disclosure of the existence or non-existence of the record in the public interest?
27. The specific circumstances in each case will inform the Information Commissioner's assessment.
28. In this review, the BPS asserts that any responsive record, if it exists or were to exist, would be exempt in full according to the exemptions at sections 23 (personal information) and/or 30(1)(a) (prejudice to investigations) under Part 4 of the PATI Act.
29. Thus, it is beneficial to set out the requirements of the personal information exemption (section 23), before venturing into the parties' submissions and the analysis portion of this Decision.

#### Section 23 (personal information)

30. Section 23(1) allows a public authority to deny public access to a record, or part of a record, if it consists of personal information, subject to exceptions in section 23(2).
31. Section 24(1), as it was in effect at the time of this PATI request, broadly defines personal information as information recorded in any format about an identifiable individual.<sup>4</sup>
32. Certain information about identifiable individuals is excluded from the definition of 'personal information' in the PATI Act, in accordance with section 24(2). For example, section 24(2)(a) excludes information that relates to the position or functions of an individual who is or was a public officer.
33. The exemption in section 23(1) also does not apply in the limited circumstances set out in subsection (2); for example, if information sought is already available to the public or if the

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<sup>3</sup> See [Decision 15/2023, Bermuda Police Service](#), at paragraphs 13 to 19, and [Interim Order 01/2024, Cabinet Office](#), at paragraphs 18 to 24.

<sup>4</sup> Sections 24(1) and (2)(a) were amended by 2023 : 23 s. 16, but not effective until 1 January 2025.

individual to whom the information relates consents to disclosure, etc. None of the exceptions to the exemption apply in this review.

34. The section 24(1) definition of personal information (as it was in effect at the time of this PATI request) lists categories of personal information including race, religion, medical or employment history, and education.
35. If the information in the record includes reference to a specific person, it is personal information. A record will also contain personal information if the individual's identity is reasonably ascertainable from the information. This means that the individual's identity can be determined by comparing the information with other public information, e.g. the woman who was the first female premier of Bermuda.
36. Decision makers should therefore assess whether the disclosure of records containing identifiers other than names (such as ages, locations, occupations, etc.), when these identifiers are combined with each other or with other information in the public domain, could lead to an individual being readily identified.
37. If an access to information request names specific individuals and looks for records of those individuals, the records captured by the request would clearly relate to one or more named individuals. In that case, it might be appropriate for public authorities not to confirm the existence or non-existence of any requested records, although this would depend on various factors, such as the nature of the records being sought and information already available in the public domain.
38. If engaged, the personal information exemption is subject to the public interest test in section 23(6). In the context of personal information, the public interest test requires a balancing of the public interests in favour of publicly knowing an individual's personal information, on the one hand, against the privacy rights of the individual and any other public interest in favour of confidentiality, on the other.
39. When considering the public interest test for a personal information disclosure, public authorities should take into account the following factors:<sup>5</sup>
  - a. whether disclosure would further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations;
  - b. whether disclosure would be fair to the individual under all the circumstances, which would include consideration of whether sensitive personal information was involved,

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<sup>5</sup> See [Decision 14/2025, Bermuda Police Service](#), at paragraph 22.

the potential consequences of disclosure on the individual, and the individual's reasonable expectations of privacy; and

c. whether disclosure of the personal information is necessary to further the public interests that have been identified.

40. In sum, to appropriately rely on the personal information exemption in section 23(1), the public authority must consider the following questions:<sup>6</sup>

- [1] Does the record consist of information about an identifiable individual?
- [2] Does the information fall within any of the exclusions to the definition of personal information in section 24(2)?
- [3] Do any of the exceptions to the exemption in section 23(2) apply to the record?
- [4] If the exemption on personal information in section 23(1) is engaged, does the balance of the public interest require disclosure?<sup>7</sup>

41. A public authority relying on section 23(1) has the burden to show that, on the balance of probabilities, the exemption is justified.

42. Note also that for public authority employees, elected officials and other public officials, an individual's reasonable expectations of privacy are based upon an objective assessment. It considers whether the information relates to their public or private life, the seniority of the individual, other information that is already in the public domain, and whether they are in a public facing role.

43. The disclosure of the personal information must also be necessary. The Information Commissioner will consider whether the public interest concerns can be met by disclosure of other information in the records that interferes less with an individual's right to privacy.

#### *Public authority's submissions*

44. In this review, the BPS asserted that any responsive record, if it existed or were to exist, would be exempt in full under sections 23 and/or 30(1)(a) of the PATI Act; and, because of

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<sup>6</sup> See [Decision 14/2025, Bermuda Police Service](#), at paragraph 23.

<sup>7</sup> Disclosure of records consisting of personal information should also be made if disclosure would benefit the individual, in accordance with section 23(6) of the PATI Act, which is irrelevant in this case.

the application of those exemptions, it was justified to refuse to disclose the existence of any responsive records, if they were to exist, under section 38.

45. The BPS's 13-page initial decision set out extensive reasons regarding its reliance on section 38 and the underlying exemptions of section 23 and section 30(1)(a). The BPS's internal review decision upheld the initial decision, relying chiefly upon its initial decision's rationale. The BPS continued to rely on the same rationale for the duration of this external review by the Information Commissioner.
46. The strength of the BPS's decisions and submissions relied heavily on the point that '...any responsive record, if it existed or were to exist, would be exempt in full under section 23(1) because it [would consist] of personal information'.
47. The BPS stated that the PATI request named a specific individual and was seeking records about that individual. Therefore, any responsive record captured by the request would clearly relate to that named individual and would demonstrate whether the individual had been subject to some form of disciplinary proceedings. The information in any responsive record, therefore, would be information recorded in a form about an identifiable individual.
48. The BPS placed reliance on two decisions from the Scottish Information Commissioner, where the Scottish Information Commissioner upheld a public authority's refusal to confirm or deny if it held information. One was a decision by the University of Edinburgh refusing to confirm or deny if it held information relating to a misconduct investigation against a named individual.<sup>8</sup> An Information Commissioner's decision which addressed not confirming the existence or non-existence of personal information was persuaded by the Scottish Information Commissioner's reasoning in that decision notice.<sup>9</sup>
49. The BPS stated that any records, if they existed or were to exist, would relate to disciplinary proceedings and, therefore, would not fall within the exclusion to the definition of personal information in section 24(2)(a) of the PATI Act, as the information would attach to them as an individual and not to their position or functions. Furthermore, none of the exceptions to the exemption found in section 23(2) would apply to the records, if they existed or were to exist.
50. The BPS also considered whether records, if they existed or were to exist, would be disclosed in the public interest under section 23(6). The BPS accepted that there was a public interest in ensuring that allegations made against police officers are appropriately

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<sup>8</sup> See the Scottish Information Commissioner's [Decision Notice 111/2021](#).

<sup>9</sup> See [Decision 15/2023](#), Bermuda Police Service, at paragraphs 22 to 24.

investigated. This public interest, however, must be weighed against the privacy rights of the individual. The BPS considered that the named individual has a reasonable expectation that records related to internal disciplinary matters would be kept confidential and private and that disclosure of such records would cause the individual some degree of harm or distress.

51. The BPS further stated that for a conduct matter to be raised against an individual under the Police (Conduct) Orders 2016, there only has to be an 'indication' that the police officer concerned may have behaved in a manner which would justify the bringing of disciplinary proceedings. This is a low threshold to meet. Disclosure of records related to such disciplinary matters would be unfair to the individual.
52. The BPS went on to consider the public interest test in section 38(2) of the PATI Act, i.e. whether it was in the public interest to disclose the existence or non-existence of the records. The BPS stated that the interest in disclosure must be a public interest and not the private interest of the individual Applicant.
53. As above, the BPS accepted that it was in the public interest to ensure police officers are subject to appropriate disciplinary processes and action but stated that there are robust safeguards in place to ensure that police officers are held to the highest standards of behaviour. This includes the Conduct Orders, the Code of Ethics, the independent police Misconduct Panel, and the independent Police Complaints Authority.
54. The BPS concluded that it was not in the public interest to publicly confirm whether responsive records existed, as disclosure of the existence or non-existence of records would confirm whether a particular individual had been the subject of a disciplinary matter. The BPS was satisfied that the intrusion of privacy and potential distress that could be caused to the individual by disclosing the existence or non-existence of records outweighed any legitimate interest in disclosure.
55. The BPS's decision also found that any responsive records would be exempt under section 30(1)(a), but this is not assessed as part of this Decision.

#### *Applicant's submissions*

56. The Applicant made thorough submissions in their application for an external review by the Information Commissioner and provided additional submissions during the review. A summary of those submissions follows.
57. The Applicant stated that they are in lawful possession of documents that show the individual named in the PATI request had acted corruptly and that the individual's conduct

should have been considered criminal and properly investigated. The Applicant presented a view that, despite documented evidence, no action was taken against the individual by the appropriate authorities.

58. The Applicant submitted that there was a public interest in the public having confidence that officers of the BPS are held to the highest possible moral and ethical standards and that senior members of the BPS are addressing corrupt behaviour when it is detected and not 'swept under the carpet'. The Applicant stated that this public interest outweighed the public interest in non-disclosure relied on by the BPS, including its reliance on the exemptions in sections 23 and 30(1)(a).
59. Regarding the public interest in the disclosure of any underlying records (if they existed), the Applicant submitted that the PATI Act was enacted, in part, to strengthen transparency and public trust in public authorities. Allegations of misconduct within law enforcement are inherently matters of public concern. The Applicant asserted that confirming whether an investigation occurred would not, in and of itself, infringe personal privacy, but would rather uphold the public's right to know whether the BPS holds its officers accountable. The Applicant's submissions also put forward a view that, where a complaint concerns abuse of power, serious misconduct or improper influence, the public interest in disclosure of records far outweighs the interest in protecting the identity of the officer involved, especially when the information does not seek medical, family or intimate personal details.
60. The Applicant made further submissions that disclosing the existence or non-existence of the requested records would not, by itself, reveal any sensitive personal information, was necessary to enable public scrutiny of the BPS's handling of internal misconduct allegations, and would promote public confidence in the BPS's transparency and internal accountability mechanisms.
61. The Applicant further stated that the risk of reputational harm to an officer does not, in this context, override the systemic benefit of confirming the existence of investigatory processes, particularly in circumstances where there is a pattern of concern, credible public complaints, and a perception that the BPS is lacking accountability.
62. Lastly, the Applicant submitted that there is a distinction between disclosing details regarding a misconduct investigation and confirming the existence of an investigation. The Applicant stated that a 'neither confirm nor deny' stance may be appropriate in narrow circumstances, such as where revealing the existence of a record would clearly identify a confidential source or expose national security risks, which were not the case here.

### *Discussion*

63. As an outline to the approach, below, the Information Commissioner will consider:

- a. whether the BPS was justified in its reliance on the section 23 personal information exemption for notionally responsive records (including whether the definition of personal information applied and a public interest balancing exercise); and
- b. whether disclosure of the existence or non-existence of notionally responsive records was in the public interest.

[1] Which exemption in Part 4 applied to the record, if it existed or were to exist?

64. As mentioned above, this Decision is considering the BPS's reliance on the section 23 personal information exemption to support its use of section 38 to neither confirm nor deny the existence of a record or records.

[2] If a record existed or were to exist, was it or would it be exempt from public disclosure by applying the requirements for the section 23 exemption?

65. Section 23(1) allows a public authority to deny public access to a record, or part of a record, if it consists of personal information. As outlined above, personal information is defined by section 24(1) to mean information about an identified or an identifiable individual.

66. The PATI request in this review contained five items, all of which sought records related to stated disciplinary action against a specifically named individual. Given that the Applicant has named a specific individual in their PATI request with the subject matter about a stated complaint or disciplinary action taken against the named individual, the Commissioner is satisfied that any records addressing that subject matter, if they did exist, clearly relate to the individual's personal information.

67. However, section 24(2) excludes certain information from the definition of personal information. Here we are concerned particularly with section 24(2)(a), which excludes information about an individual, who is or was an officer or employee of a public authority, that relates to the position or function of the individual.

68. In keeping with a succession of past ICO decisions, the definition of personal information in section 24(1) is considered very broad, whilst the exclusion in section 24(2) is very

narrow.<sup>10</sup> Therefore, routine personal work information of elected and public officials still falls within the definition of personal information.

69. Past ICO decisions have also established that the exclusion from the personal information exemption in section 24(2)(a) does not exclude from the definition of 'personal information' information about an individual's **performance** of the position or function of their post. This is taken to include disciplinary actions, performance reviews or complaint details, which attach to the individual rather than to the general nature of the post and, because of this, have a more personal quality.<sup>11</sup>
70. In this instance, the Commissioner is inclined to continue with already established analysis, to determine that the exclusion in section 24(2)(a) does not apply, because the PATI request in this review was asking for records containing personal information about a named police officer's individual performance in their role as a police officer, specifically about potential or the existence of investigations into the officer's conduct.
71. With none of the other section 24(2) exceptions applicable, the Commissioner finds that, if any notionally responsive records to the PAIT request, as written, were to exist, they meet the statutory definition of personal information.
72. Additionally, section 23(2) sets out exceptions to consider before accepting that a record that consists of personal information is exempt from disclosure by way of section 23(1). However, none of these exceptions were raised by the BPS as relevant. Therefore, it is conclusive, based on lack of submissions, that notionally responsive records to the PATI request would consist of personal information which may be exempt from disclosure if it is not in the public interest.
73. Now, it must be fully considered whether disclosure is in the public interest, as required by section 23(6). This involves weighing the public interest in protecting the privacy of personal information of an identified individual against the wider public interest factors in favour of disclosure.
74. The Applicant's submissions in favour of disclosure, particularly in relation to greater public interest in transparency, accountability and public confidence in the BPS by revealing corruption, abuses of power, serious misconduct or improper influence by police officers, are relevant and have been carefully considered. The Applicant has weighed these public

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<sup>10</sup> See [Decision 02/2019, Office of the Governor](#), at paragraphs 39-47.

<sup>11</sup> See [Decision 31/2024, Bermuda Police Service](#), at paragraph 37.

interest factors to be greater than the public interest in protecting the identity of the officer named in their PATI request.

75. Although the public interest factors identified by the Applicant are relevant, the Applicant's private interest in the disclosure must be considered when assessing the extent to which those factors reflect a wider public benefit. When an applicant has their own private interest in the disclosure, this diminishes the strength of wider public interest factors.
76. Further, the public interest was better served, in this instance, not by unmasking an individual's identity or by undermining an individual's expectation to privacy through a disclosure of information relating to hypothetical allegations of misconduct, but by the trust and integrity that the public puts in the oversight bodies who are tasked with independently investigating allegations made against the conduct of police officers.
77. Rank-and-file officers who carry out routine duties and do not hold senior or managerial positions have a legitimate expectation that information relating to their employment, such as their employment history and disciplinary record, would be held in confidence and not disclosed publicly. There is a significant risk that the consequence of public disclosures of this kind could cause distress to lower-rank officers, could potentially prejudice their current or future career, and could undermine the due process of the legitimate oversight bodies tasked with reviewing officer conduct in relation to allegations of wrongdoing.
78. The Commissioner also finds merit with the BPS's assertion that, as there is a low threshold of simply an 'indication' that an officer's conduct warrants raising a disciplinary proceeding under the Police (Conduct) Orders 2016, publicly disclosing information that could signify a disciplinary proceeding was initiated but not advanced, would be prejudicial to the subject officer. The low threshold to initiate conduct proceedings against an officer is further demonstration that the public interest in holding police officers to account is adequately maintained through the fairness of administrative processes through those formal channels and avoiding harm to individuals' right to privacy.
79. The integrity and due process of any investigation or proceeding tasked with reviewing officers' conduct by any of the authorised oversight bodies must be preserved. There are important and significant public interests to be served by having disciplinary matters dealt with through the appropriate channels. Procedural fairness and natural justice direct that an oversight body's handling of a complaint or allegation of wrongdoing against an officer would not ordinarily be open to the public, nor would details of their proceedings be shared for public discourse. Public disclosure of personal information of the named individual in the PATI request was not necessary to further the public interests of transparency and

accountability for the BPS, if that disclosure could also have undermined the integrity of the oversight bodies' independent functions.

80. The Applicant alleged, during this review, to be in possession of documents which they believe demonstrate officer misconduct of the individual named in their PATI request. This allegation is not a matter of fact for consideration in this review, and no evidence was examined by the ICO in relation to any such documents, if they were to exist. Little weight was given to this submission because it reflects a private interest in public disclosure that arises in the context of an underlying dispute. The disclosure sought by the Applicant may have a legitimate interest, with ostensibly some general public good, but does not further the wider public interest of confidence in law enforcement oversight in any material way that is not already advanced through the existing official channels.
81. For all these reasons, the Commissioner finds that the public interest in maintaining the privacy of the personal information of a named officer outweighed the public interest in transparency and accountability.
82. The Commissioner is also satisfied, without having examined any notional records, that if any records were to exist which meet the description of the PATI request, there is a high likelihood that they would be exempt from disclosure, because they would patently reveal personal information of the named individual and confirm whether or not they were subject to disciplinary proceedings. Therefore, any responsive records, should they exist, would be exempt records according to section 23 of the PATI Act (as read with the section 24 definition of personal information).
83. Having found that any notional records would be exempt by section 23, there is no further need to assess the applicability of the BPS's reliance on the exemption in section 30(1)(a) (prejudice to investigations).
  - [3] If the exemption was justified, was the disclosure of the existence or non-existence of the record in the public interest?
84. The public interest analysis required by section 38(2) is limited to weighing why it is in the public interest to disclose, or refuse to disclose, the existence of any record. As already determined, above, if any responsive records were to exist, the public interest in maintaining the privacy of the concerned individual outweighed the legitimate public interest in transparency and accountability of police officers' conduct, for disclosure of those records. Now, the Commissioner turns to consider whether the public interest in knowing if any records existed outweighed the reasons to keep the existence secret.

85. The Applicant submitted that they did not accept that disclosure of the existence of responsive records would, by itself, reveal personal information of the individual named in the PATI request. For reasons already stated above, the Commissioner does not find merit in this submission.
86. The PATI request was specifically worded by the Applicant seeking records related to certain BPS internal activities surrounding the named individual based on five different descriptions. The Applicant, being already apprised of information about the individual named in the PATI request and details about the BPS's disciplinary processes, could without much effort draw their own conclusions from the BPS confirming the existence of responsive records.
87. Based on how the request was worded, there would be no effective way for the BPS to sever the personal information of the named individual in the PATI request from non-personal information, which might have better prospect of disclosure under the PATI Act. To do so would not prevent the revelation that personal information exists, thereby unmasking the statutory protections available under section 38.
88. Disclosure of the existence of responsive records could be taken with other available information, which could allow the Applicant to make unsubstantiated assumptions about the individual concerned or might allow the public at large to identify and find out personal information of the named individual. In a small jurisdiction with a population of less than 65,000 people, with a police service of less than 400 officers, and with an easily calculable number of complaints made against police officers in any particular year, one can mosaic information together which is likely to raise public speculation about the identity of the individual or could actually identify the individual named in this PATI request.
89. Again, there were no doubt favourable public interests in transparency and accountability with respect to the conduct of police officers and in ensuring that adequate, robust disciplinary investigations are carried out by appropriate authorities such as the Misconduct Panel and Police Complaints Authority.
90. However, confirming the existence of a responsive record to this PATI request would likely have the effect of revealing whether the individual named in this PATI request was or was not, in fact, subject to a conduct complaint, investigation or disciplinary action, or reveal that unproven, untested allegations were made against that named officer. This could be misleading and fail to promote transparency and does not further the public interest. Confirming if records exist, in this instance, is antithetical to protecting the personal information being preserved by the BPS justifiably applying section 23 of the PATI Act to deny public access to notionally responsive records.

91. Taking all this into account, the Commissioner is satisfied that having regard to the public interest in maintaining the orderly and consistent operation of long-standing public institutions tasked with reviewing the conduct of police officers, added sufficient weight to the public interest factors against disclosing the existence or non-existence of notionally responsive records. Taken together with the privacy interests of the identified individual in the PATI request, these factors outweighed the public interest in transparency and accountability for public authorities.
92. The Commissioner finds that it would have been contrary to the public interest for the BPS to reveal whether any notionally responsive records existed.
93. Closing now on a procedural note, this Applicant raised a concern that the Head of Public Authority did not exercise independent judgement when conducting the internal review of the PATI request. This was addressed as a procedural issue in this external review to help the BPS improve its compliance with section 43(2)(b)(i) of the PATI Act, which requires the head of public authority to notify the requester of the decision and the reasons for the decision.
94. The BPS indicated that, from its perspective, the Head of Public Authority had conducted an internal review and took independent judgement to the request but thought it sufficient in its internal review decision notice to simply apply the same rationale provided in its 13-page initial decision. The ICO recognises that this practice is not uncommon nor unique to the BPS and offers guidance to public authorities on improving their internal review decision notices.
95. Providing full reasons for an internal review decision allows requesters to have some confidence that internal reviews are not simply a 'rubber-stamping' of the public authority's initial decision. Providing full reasons also shows that the head of public authority has brought independent judgement during the conduct of the internal review, particularly where a public interest analysis is required.
96. The BPS accepted the ICO's guidance to provide full, detailed reasons for its internal review decisions to demonstrate they meet the section 43(2)(b)(i) requirement and committed to remedying this during future internal reviews.

### *Conclusions*

97. Based on the above analysis, the Information Commissioner finds that the BPS was justified in applying section 38 of the PATI Act to refuse to disclose whether a record existed, because, if the record itself existed or were to exist, it was an exempt record under section 23 of the PATI Act, and it was not in the public interest to disclose its existence.

### **Decision**

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In this Decision, the Information Commissioner affirms the Bermuda Police Service's internal review decision applying section 38 of the Public Access to Information (PATI) Act 2010 to refuse to disclose whether a record existed, because, if the record itself existed or were to exist, it was an exempt record under section 23 of the PATI Act, and it was not in the public interest to disclose its existence or non-existence.

### **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.



**Decided by Jason Outerbridge, Information Commissioner, 6 February 2026**

## Appendix: Relevant statutory provisions

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### Public Access to Information Act 2010<sup>12</sup>

#### Public interest test

21 For the purposes of this Part, the test of whether disclosure by a public authority of a record or the existence of a record is in the public interest is whether the public interest would, on balance, be better served by disclosure than by non-disclosure.

#### Personal information

23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.

[...]

(6) A record that contains personal information relating to an individual shall be disclosed if disclosure of it is in the public interest or would benefit the individual.

#### Definition of personal information

24 (1) Subject to subsection (2), “personal information” means information recorded in any form about an identifiable individual, including—

[...]

(2) But “personal information” does not include—

(a) information about an individual who is or was an officer or employee of a public authority that relates to the position or functions of the individual;

[...]

#### Non-disclosure of existence of a record

38 (1) A public authority may refuse to disclose whether a record exists if the record itself, if it exists or were to exist, is or would be an exempt record.

(2) The existence or non-existence of a record shall be disclosed if disclosure of it is in the public interest.

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<sup>12</sup> This is the PATI Act in effect in July 2024 at the time of this PATI request.

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