

## Decision Notice

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### Decision 14/2020: Ministry of Health Headquarters

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**External correspondence about cannabis or cannabinoids law or policy**

**Reference no: 20180716**

**Decision date: 29 October 2020**

## Summary

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The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Health Headquarters (**Ministry**) for records of external correspondence about cannabis, cannabinoids, cannabis law or policy, or cannabinoid law or policy. The Ministry's internal review decision administratively denied the request as frivolous or vexatious, in accordance with section 16(1)(e) of the PATI Act.

The Information Commissioner has annulled the Ministry's internal review decision which administratively denied the PATI request under section 16(1)(e) of the PATI Act. The Information Commissioner has ordered the Ministry to process item 4 of the PATI request and issue a new initial decision, in accordance with the provisions of the PATI Act and this Decision.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 16(1)(e) (frivolous or vexatious).

The full text of each statutory provision cited above is reproduced in Appendix 1 to this Decision. The Appendix forms part of this Decision.

## Background

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1. This review involved the same Applicant, the same public authority and the same general subject for the records sought as in three prior decisions by the Information Commissioner, Decision 30/2019, Decision 31/2019 and Decision 32/2019. The background in the prior decisions about the interactions between the Applicant and Ministry is relevant in this current review. Therefore, this Decision should be read together with the three prior decisions.
2. Notably, Decision 32/2019 was the Information Commissioner's first decision addressing an administrative denial under section 16(1)(e) of the PATI Act for a frivolous or vexatious request, and this Decision is the second. In Decision 32/2019, the Information Commissioner reversed the Ministry's reliance on section 16(1)(e) and varied the decision to deny the request in accordance with the exemption for personal information in section 23(1) of the PATI Act.
3. On 1 June 2018, the Applicant made PATI request no. 524 to the Ministry asking for all of the correspondence sent by the Ministry to any entity outside the Government,

including quangos, about cannabis, cannabinoids, cannabis law or policy, or cannabinoid law or policy. The Applicant sought records from 1 January 2014 to 1 June 2018. The Applicant specified four examples of the type of information sought, including:

- information published on a website (**item 1**);
  - press releases (**item 2**);
  - comments or statements given to the press (**item 3**); and
  - emails and letters to professional organisations, businesses, individuals, etc. (**item 4**).
4. The Applicant expressly stated that these were only examples of the records sought and should not be understood as a definitive list.
  5. In July 2018, the Ministry issued an initial decision administratively denying access to items 1-3 in accordance with section 16(1)(f) of the PATI Act because these records were already in the public domain. The Ministry also issued a decision by the head of the authority notifying the Applicant that item 4 of the request was refused in accordance with section 16(1)(e) because it was frivolous or vexatious.

## Investigation

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6. The application to the Information Commissioner was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request to a public authority. Because the Ministry's decision was made by the head of the authority and the intention of both parties was for the Information Commissioner to issue a decision on this matter, the Information Commissioner deemed that an internal review request to the Ministry and a referral to the Information Commissioner had taken place in accordance with section 44 of the PATI Act. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
7. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Ministry to determine whether it had justified its denial of the request as frivolous or vexatious.
8. On 29 August 2018, the Information Commissioner notified the Ministry that the Applicant had made a valid application.
9. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority and the applicant a reasonable opportunity to make representations. The

ICO invited the Ministry and Applicant to comment on this application and to make submissions to the Information Commissioner for consideration in this review. The Ministry was further asked specific questions to justify its reliance on section 16(1)(e) of the PATI Act. The Applicant relied on the submissions made in the prior three related reviews. The Ministry made fresh submissions. The ICO also relied upon factual information from the three prior reviews related to the Ministry's current submissions.

10. The ICO's file was inactive for some time while the ICO progressed a backlog of reviews, which included the prior three related decisions issued in December 2019.

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

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11. In coming to a decision on this matter, the Information Commissioner considered all of the relevant submissions, or parts of submissions, made by the Ministry and Applicant. She is satisfied that no matter of relevance has been overlooked.

#### ***Frivolous or vexatious request – section 16(1)(e)***

12. Section 16(1)(e) of the PATI Act is a discretionary administrative ground that allows a public authority to refuse public access to a record if "the request is, in the opinion of the head of the authority, frivolous or vexatious"<sup>1</sup>. Public authorities are not required by the PATI Act to refuse the request and, in certain instances, they may decide to process the records responsive to the request.
13. The PATI Act and the Public Access to Information Regulations 2014 do not define 'frivolous' or 'vexatious'. Normally, the Information Commissioner would apply the words' plain meaning, i.e., the dictionary definition. Most jurisdictions with similar provisions, however, caution against using the plain meaning of 'frivolous' and 'vexatious' in the context of access to information. The Information Commissioner has considered Bermuda's PATI regime, guidance drawn from the court's definitions of the terms, and guidance from other jurisdictions with similar legislative frameworks, to adopt her view.<sup>2</sup>
14. Section 16(1)(e) is aimed at preventing abuses by requesters of the processes set out under the PATI Act. This includes when a request is made in bad faith, or when the

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<sup>1</sup> This provision is similar to section 9(1)(c) of the Ombudsman Act 2004, which allows the Ombudsman to decline to investigate a complaint that is determined to be "frivolous, vexatious or not made in good faith".

<sup>2</sup> For a full explanation, see Decision 32/2019, Ministry of Health Headquarters, paras. 11-32.

requester's pattern of conduct is such that it amounts to an abuse of process or of the right of access. Here, the Information Commissioner reviews a public authority's determination that the PATI request was an abuse of process due to a pattern of conduct.

15. Applying section 16(1)(e) should not be done lightly. A request should not automatically be deemed frivolous or vexatious simply because a public authority decided that a requester's earlier request was frivolous or vexatious. Public authorities should also be reflective about whether the quality of their prior responses to a requester might have contributed to a requester's persistence.
16. Further, before deciding to apply an administrative denial, a public authority must consider its duty to assist the requester with the request, as required by section 12(2)(a). The Minister's PATI Practice Code, issued in January 2020<sup>3</sup>, explains in paragraph 10.5.4 that it is in accordance with the duty to assist in section 12(2)(a) to communicate with an applicant if an administrative denial is being contemplated. Although not present in this case, in some circumstances it may not be practical for a public authority to seek to assist a requester.

#### Pattern of conduct

17. A pattern of conduct requires recurring incidents of related or similar requests by the requester. The time over which the behaviour is committed is also a relevant factor. The fact that a pattern of conduct exists is not, of itself, sufficient. The pattern of conduct must be such that an abuse of process or the right of access is evident.
18. As the Information Commissioner set out in Decision 32/2019, Ministry of Health Headquarters, paragraph 29, public authorities might consider the following factors as relevant to determine whether a requester's pattern of conduct amounts to an abuse of process:
  - a. The actual number of requests and appeals filed, and whether they are excessive by reasonable standards;
  - b. The nature and scope of the requests, and whether they are excessively broad and varied in scope or unusually detailed;

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<sup>3</sup> The Minister issued the Public Access to Information: Administrative Code of Practice for Public Authorities (January 2020) (**PATI Practice Code**) in accordance with section 60(1) of the PATI Act, available at [www.gov.bm/sites/default/files/PATI-Administrative-Code-of-Practice.pdf](http://www.gov.bm/sites/default/files/PATI-Administrative-Code-of-Practice.pdf).

- c. Whether the process was used more than once for the purposes of revisiting an issue which was previously addressed;
  - d. The purposes of the requests, and whether they were submitted for their 'nuisance' value, made without reasonable or legitimate grounds, or intended to accomplish some objective unrelated to the public access process;
  - e. The sequencing of the requests, and whether the volume increased following the initiation of court proceedings or the occurrence of some other related event; and
  - f. The intent of the requester, and whether their aim was to harass the government or to break or burden the system.
19. This is a non-exhaustive list of factors for consideration, and public authorities are cautioned from using it as a definitive checklist.
20. When assessing the pattern of conduct, the outcome or cumulative effect of the requests is also a relevant consideration. It is appropriate to consider the request in the contexts of other requests made to the public authority and in the context of the requester's other dealings with the public authority.
21. As with exemptions, when a request for access is refused by a public authority on administrative grounds, the burden is on the public authority to justify its refusal. The Ministry bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify an administrative denial under section 16(1)(e) because the request was frivolous or vexatious.

*Public authority's submissions*

22. The Ministry denied the Applicant's request as frivolous or vexatious because of the frequent and overlapping nature of the requests submitted, as well as the Applicant's 'unreasonable persistence'.
23. In reaching this conclusion, the Ministry stated that it had considered the following factors:
- a. the content of the request, as compared with two prior requests, nos. 461 and 453;
  - b. the number of requests, the similarity of the subject matter and overlapping timeframes of the Applicant's seventeen prior requests;

- c. the Applicant's numerous emails sent in a short time span related to their prior requests; and
  - d. the Ministry's prior internal review decision that the Applicant's seventeenth request (no. 487) was frivolous or vexatious.<sup>4</sup>
24. The Ministry also noted that it had received a legal opinion inclusive of UK case law on the UK Freedom of Information Act, but did not explain further.
25. In the prior related reviews, the Ministry provided the ICO with a list from the PATI request tracking system showing that request no. 524 being considered in this review was the Applicant's eighteenth request to the Ministry since March 2016. The Ministry asserted that the Applicant had made a high volume of requests.
26. The Ministry also submitted that request no. 524 appeared to be materially the same as two prior requests, nos. 453 and 461, with the exception that no. 524 sought an expanded list of records. The Ministry understood the Applicant's intent was to receive any records resulting from searching for the keywords stated in PATI request no. 524. The Ministry had already disclosed records responsive to those prior searches, using the same or related keywords the Applicant put forth in request no. 524.
27. It appeared to the Ministry that when the Applicant was not satisfied with the Ministry's responses, the Applicant attempted to ask the same question with minor changes.
28. In concluding that the Applicant's requests amounted to a pattern of conduct that was an abuse of process, the Ministry also referenced examples of the Applicant's conduct. Previously, the Applicant made six separate PATI requests for emails (nos. 454 to 459). The PATI requests used identical keywords and relevant time periods but differed only in the specific officer's emails that were sought<sup>5</sup>. The Applicant also requested sets of records that were already in the public domain via the Ministry's website, and thus reasonably accessible to any member of the public without needing a PATI request.

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<sup>4</sup> The Ministry's timely internal review decision in this case was made while the Information Commissioner's review of the Ministry's decision in PATI request no. 487 was pending. That review resulted in Decision 32/2019.

<sup>5</sup> One of these six PATI requests was 'closed' by the Ministry as a duplicate because one of the named individuals was assigned to use a general email account, not an individualised one.

29. Finally, the Ministry submitted that the overall effect being experienced by the Ministry was a continuous workflow promoted by one requester, which essentially became a never-ending request with overlapping timelines. The Ministry noted the frequency of the Applicant's requests as being nearly one per month related to the same general subject matter, with no increase at any particular time observed.

#### *Applicant's submissions*

30. The Applicant expressly relied upon submissions made in the reviews for the prior related Decisions, where relevant.
31. The Applicant also explained that they were seeking to determine exactly what information the Ministry had disseminated to the general public and its various stakeholders about cannabis and cannabinoid law and policy reform.
32. The Applicant is a Bermudian scientist and researcher preparing a report about Bermuda's drug policy for publication. The Applicant further outlined that any frequency and overlap in their PATI requests to public authorities reflected the research standards expected for academic publications.
33. The Applicant explained the need to evaluate both an original press release and article based on a press release. Depending on what actually happened at the time, a press release might not be published and the news article might not provide a complete account of the information in the press release. Having access to both the news article and press release would help the Applicant identify any discrepancies between primary and secondary sources. Generally, it was critical to the Applicant's research that they seek primary sources, rather than having access only to secondary sources.

#### *Discussion*

34. The Ministry has not asserted that the Applicant's PATI request was made in bad faith, e.g., for an illegitimate or dishonest purpose. Nor has the Ministry claimed that the Applicant refused to cooperate with the Ministry.
35. The Information Commissioner, therefore, considers only the Ministry's arguments that the Applicant's pattern of conduct amounts to an abuse of process. The Information Commissioner assesses the relevant factors under these circumstances.

#### The actual number of requests filed

36. The Information Commissioner acknowledges that the Applicant's request is the eighteenth request received by the Ministry from the Applicant, from the date of the



Applicant's first request in March 2016 until 1 June 2018. Importantly, multiple requests attributable to one requester does not, by itself, speak to whether the number of requests is excessive.

37. Certain requesters can reasonably be expected to submit numerous requests to a public authority, even with overlapping timeframes. Here, the Applicant is a Bermudian academic researcher analysing government's policy and legislative position on a topic of high public interest – cannabis and cannabinoid law and policy.
38. Further, multiple PATI requests may be expected to involve the same general subject when significant public policy debates and stakeholder consultation are involved. The public debate in this case was highlighted in February 2018, for example, when the Director of Public Prosecutions announced a public awareness campaign about decriminalising cannabis.<sup>6</sup>
39. Most relevant under these circumstances is whether the requests seek different specific records or involve differing time periods, even though they relate to the same general subject matter that is the focus of public debate.
40. As concluded in Decision 32/2019, paragraph 45, the Information Commissioner continues to have the view that standing alone, the number of requests made by the Applicant over a three-year period is not excessive, particularly when the significant public debate about cannabis law and policy is considered.

#### The nature and scope of the requests

41. In considering the Ministry's argument that the request at issue here, no. 524, is substantially the same as two prior requests, nos. 453 and 461, the Information Commissioner notes the existence of an overlap between the requests.
42. All three requests involve communications about cannabis. Requests nos. 453 and 461 specifically sought email correspondence to and from the former Permanent Secretary (**PS**) and former Chief Medical Officer (**CMO**), respectively, containing keywords that overlapped with those contained within no. 524.
43. It is reasonable to conclude that external formal correspondence from the Ministry on a topic being considered for policy and legislative change would primarily come from either the PS or CMO. That being said, it is also reasonable to conclude that

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<sup>6</sup> See the Government's press release, [Public awareness campaign: Decriminalisation of cannabis](https://www.gov.bm/articles/public-awareness-campaign-decriminalisation-cannabis), dated 26 February 2018, available at [www.gov.bm/articles/public-awareness-campaign-decriminalisation-cannabis](https://www.gov.bm/articles/public-awareness-campaign-decriminalisation-cannabis).

senior policy analysts may have also corresponded on cannabis and cannabinoid law or policy with external stakeholders.

44. The two prior requests nos. 453 and 461 were also limited to email correspondence and did not include any hard copy correspondence that may reasonably have been used for more formal communications.
45. The time periods for the requests also overlap, but are not identical. Requests no. 453 and 461 involved emails from December 2012 to April 2017. Request no. 524, however, includes a period from April 2017 to June 2018 that goes beyond the timeframe included in nos. 453 and 461.
46. The Information Commissioner sees no evidence that the Applicant had sought an internal review of the Ministry's responses to PATI requests nos. 453 or 461. The Ministry provided two separate disclosures for each request, based on the results of searching the requested locations using a narrowed selection of keywords proposed by the Applicant. This occurred as a result of the Ministry's successful consultation with the Applicant during the prior requests, to avoid administratively denying all parts of those requests due to the burden of processing them, as the Ministry explained.
47. The scope of request no. 524 still sought a broader set of records than nos. 453 and 461. This means that at least part of the responsive records for no. 524 would not have been included in any response to the prior requests.
48. With respect to the overlapping time periods for the emails of the former PS and former CMO, it would have been reasonable for the Ministry, as part of its duty to assist a PATI requester<sup>7</sup>, to explain to the requester the need to amend the request to focus the Ministry's limited resources on the parts of PATI request no. 524 that were more likely to identify new records, e.g., records that were not previously disclosed or processed for requests nos. 453 and 461. This also would have allowed the Ministry to consult with the Applicant on narrowing the scope of the PATI request, as the Ministry previously did with requests nos. 453 and 461 to avoid an administrative denial for all parts of the requests on the basis that processing the request would create a substantial and unreasonable burden<sup>8</sup>.

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<sup>7</sup> Public authorities have a duty to assist individuals in connection with a PATI request, in accordance with section 12(2)(a) of the PATI Act as well as paragraphs 10.5.3, 10.5.4, 10.5.6, 14.4.1, 14.7.6 and 15.1-3 of the PATI Practice Code.

<sup>8</sup> This is in accordance with section 16(2) of the PATI Act as well as paragraphs 10.5.4, 11.4.3, 14.7.2, 14.7.6, 14.7.7, 15.4 and 18.2 of the PATI Practice Code.

49. During the processing of those prior requests as well as this one, the Applicant was respectful and responsive. All evidence indicates that the Ministry could have addressed the overlapping portion of the PATI request with the Applicant during the handling of no. 524 to exclude re-searching and processing the relevant emails from the PS and CMO.
50. As a result, the Information Commissioner is satisfied that the non-repetitive portion of request no. 524 includes:
- a. any hard copy correspondence from officers within the Ministry from 1 January 2014 to 1 June 2018, which would not have been contained within the email accounts of the former PS and CMO;
  - b. any email correspondence from the former PS or CMO from 8 April 2017 to 1 June 2018; and
  - c. any email correspondence from officers other than the former PS or CMO from 1 January 2014 to 1 June 2018,

related to cannabis or cannabinoids law or policy and which were sent to or received from an external party outside of the Government (including quangos).

51. The Information Commissioner is also satisfied that no. 524 is not excessively broad for handling appropriately under the PATI Act, particularly in light of the parties' ability to reach an agreement on reasonably narrowing the scope of the two prior requests, nos. 453 and 461. The Information Commissioner is further satisfied that request no. 524 is not excessively varied or usually detailed.

#### The purpose of the requests

52. As noted in the prior related cases, the Applicant made clear throughout their submissions in this review, correspondence with the ICO and emails with the Ministry that the purpose for the majority of their PATI requests was to support the Applicant's academic research in preparing a report on Bermuda's drug policy. The report is intended for publication and would be available for policymakers and the general public.
53. More specifically, PATI requests nos. 453, 461 and 524 were made to determine what information the Ministry had disseminated to the general public and its various stakeholders about cannabis and cannabinoid law and policy reform. The Applicant shared with the Ministry in July 2017 that the Applicant was in the midst of writing this report in relation to the information received from PATI request no. 453.

54. The Information Commissioner acknowledges the Applicant's explanation that the purpose of any overlap between PATI requests nos. 453, 461 and 524 was aimed toward confirming the consistency or credibility of the information within the records disclosed. The Information Commissioner appreciates the rigours of academic research standards. It is reasonable for a requester to seek multiple records on the same topic to compare the records' content. This allows a PATI requester, such as the Applicant, to determine whether communications from different officers in a public authority or to different stakeholders are consistent or contradictory.
55. While requesters should be careful when drafting PATI requests, a public authority must also assist an individual with their request. When such a request results in an overlap with a prior request, the Ministry needs to address the overlapping portion. As explained above, this could have been accomplished through assisting the Applicant to amend this portion of item 4 of the PATI request. It also could have been addressed as part of consulting with the Applicant to avoid an administrative denial, by excluding the overlapping portion of the PATI request and not re-searching the emails of the former PS and former CMO from 1 July 2015 to 8 April 2017 and from 18 December 2012 to 13 April 2017, respectively.
56. The Information Commissioner also cautions the Applicant, and other PATI requesters whose research needs may result in multiple PATI requests, to ensure that a PATI request seeks only new sets of records and to remain engaged with a public authority to address any inadvertent overlap in their requests.
57. Overall, the Information Commissioner sees no evidence that the Applicant's PATI request was submitted for its nuisance value, nor that it was intended to accomplish some objective unrelated to access to public records. Nor did the Ministry make such assertion.
58. The Information Commissioner is satisfied that the request was made with reasonable and legitimate grounds, having seen no evidence to the contrary.

#### The sequencing of events

59. The Information Commissioner sees no evidence that the Applicant's PATI requests were related to the occurrence of some other event, such as the initiation of court proceedings.
60. Despite any frustration on behalf of the Ministry in engaging with the Applicant, the Information Commissioner is satisfied that the Applicant's request was genuinely

directed at gathering information about an underlying issue of public importance, e.g., cannabis-related law and policy reform.

The intent of the requester

61. The Ministry was invited to comment on the motive behind the Applicant's requests. The Ministry's response indicated that the Ministry was not aware of any intent beyond the stated purpose of the PATI request to gain access to the requested records.
62. After a careful review of the Applicant's correspondence with the Ministry for this request and for prior PATI requests, the Information Commissioner is satisfied that the Applicant's intent was to gain access to the information requested and to confirm the accuracy of the Ministry's responses. The Information Commissioner also sees no evidence that the Applicant's intent was to harass the Ministry or to burden the Ministry with excessive requests.

Other factors: unreasonable persistence

63. During its handling of request no. 524 and this review, the Ministry highlighted the 'unreasonable persistence' of the Applicant. In addition to the factors raised above, the Ministry cited the Applicant's frequent emails as well as a set of six PATI requests that sought emails using the same keywords but each request asked for emails from a different officer within the Ministry.
64. The Information Commissioner has carefully reviewed the correspondence between the Ministry and Applicant during the handling of request no. 524 as well as numerous prior requests from the Applicant. While the Applicant is persistent in seeking public records, their communications with the Ministry are courteous and seeking to be helpful. The Applicant also demonstrated a willingness and understanding to amend prior PATI requests and accepted reasonable processing limits during the Ministry's handling of prior requests.
65. During the interactions with the Ministry to narrow prior PATI requests, the Applicant's suggestions may have been ineffective or reflected a lack of understanding of the Ministry's record-keeping or business practices. The Information Commissioner also recognises the Ministry's repeated offers to discuss the PATI requests with the Applicant and did not see any evidence that, for this particular PATI request, the Applicant accepted those offers. This, on its own, did not make the PATI request vexatious. But the Ministry could have considered an administrative denial because processing the full request would create an unreasonable and substantial burden,

which it had explained to the Applicant during its handling of nos. 453 and 461. Alternatively, the Ministry could have processed the new portions of request no. 524 to avoid an administrative denial of the entire request. Under these circumstances, the Ministry continues to have a duty to assist the Applicant in framing a request appropriately, rather than dismissing item 4 of the PATI request as frivolous or vexatious.

66. When a Ministry engages in significant public policy and law reform, it may need to be prepared for any one of its stakeholders to seek extensive public records through multiple PATI requests on the same topic. Further, when PATI requesters receive disclosed records, they have every right to analyse those records and submit follow up PATI requests for additional records.
67. The Information Commissioner is satisfied that the Applicant was persistent, but not unreasonably so.

Other factors: burden on the Ministry

68. The Ministry also emphasised that the Applicant's eighteen PATI requests between March 2016 and June 2018, on similar topics and with overlapping timelines, had made the requests appear to be a single request. As noted above, while the requests dealt with the same topic, they sought different specific records.
69. The Information Commissioner acknowledges, however, that the Ministry had been addressing the Applicant's PATI requests on a steady basis since March 2016. To its credit, the Ministry had also been informally communicating with the Applicant and voluntarily provided information as a matter of routine, e.g., outside the PATI request process.
70. When a significant public law and policy reform is under consideration, the possibility now exists that a stakeholder will exercise rights under the PATI Act to request the relevant public records. The appropriate response to any burden created by the public's exercise of their rights under the PATI Act should be a careful balancing of the public's rights with the resource needs of the public authority.
71. Further, the PATI Act's provisions afford a public authority an extension of time to process a request (section 15)<sup>9</sup>; set out an obligation for a public authority to consult with a PATI requester to amend a PATI request if it is too burdensome (section 16(2));

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<sup>9</sup> When processing PATI request no. 524, the Ministry did extend the time it would require under section 15 of the PATI Act. See paragraphs 11.4.2 and 14.11 of the PATI Practice Code.

and grant a public authority the discretion to administratively deny a PATI request if processing it would create an unreasonable and substantial burden (section 16(1)(c)).

72. In this review, the Applicant's eighteen PATI requests sought different records related to controlled drug law, policy and applications. The Applicant demonstrated a consistent willingness to work with the Ministry to process their PATI requests.
73. The Information Commissioner is satisfied that the burden on the Ministry created by the processing of eighteen PATI requests over 2 years and 4 months, and its informal information sharing with the Applicant, did not constitute an abuse of the PATI process.
74. The Information Commissioner also acknowledges that the Ministry may have experienced an additional burden in processing the Applicant's PATI request for reasons outside of its control. The Minister's PATI Practice Code provided much needed guidance to public authorities on the handling of PATI requests. It was not published until January 2020, well after the Ministry's decision subject to this review.
75. Further, the Ministry made its first determination that the Applicant's requests were frivolous or vexatious in October 2017, involving prior PATI requests. The Information Commissioner's review of that decision (no. 487) was pending for the subsequent year, preventing the Ministry from receiving any timely guidance on section 16(1)(e) before it was required to issue its decision for request no. 524.
76. At this point, both the Ministry and this Applicant now have the benefit of the Information Commissioner's decisions in multiple reviews as well as the PATI Practice Code as they proceed forward.

## ***Conclusion***

77. The Information Commissioner is not satisfied that the Applicant's PATI request, when viewed in the totality of the circumstances, constituted an abuse of process that made the request frivolous or vexatious. Further, the Information Commissioner is not satisfied that the Ministry justified its reliance on section 16(1)(e) of the PATI Act to administratively deny item 4 of the PATI request.

## Decision

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The Information Commissioner finds that the Ministry of Health Headquarters (**Ministry**) did not justify its reliance on section 16(1)(e) of the Public Access to Information (**PATI**) Act 2010 to administratively deny access to records responsive to item 4 of PATI request no. 524.

In accordance with section 48 of the PATI Act, the Information Commissioner annuls the Ministry's internal review decision, and orders the Ministry to process PATI request no. 524 and issue a new initial decision for the following responsive records related to cannabis or cannabinoids law or policy and which were sent to or received from an external party outside of the Government (including quangos):

- any hard copy correspondence sent by the Ministry from 1 January 2014 to 1 June 2018, which was not contained in the email accounts of the former Permanent Secretary (**PS**) or former Chief Medical Officer (**CMO**);
- any email correspondence from the former PS or former CMO from 8 April 2017 to 1 June 2018; and
- any additional email correspondence from 1 January 2014 to 1 June 2018 within email accounts other than records contained in the email accounts of the former PS or former CMO,

in accordance with the provisions of the PATI Act and, as directed by this Decision and the accompanying Order, **on or before Thursday, 10 December 2020**.

## Judicial Review

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The Applicant, the Ministry 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.



## Enforcement

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This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Ministry fails to comply with this Decision, the Information Commissioner has the authority to pursue enforcement in the same manner as an Order of the Supreme Court.

A handwritten signature in black ink, appearing to be 'G. Gutierrez', with a long horizontal line extending to the right.

Gitanjali S. Gutierrez  
Information Commissioner  
29 October 2020

## Appendix 1: 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 —

...

(e) the request is, in the opinion of the head of the authority, frivolous or vexatious;

...

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