

## Decision Notice

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### Decision 06/2025 Customs Department

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#### **Records on customs duty paid**

**Reference no:** 2021037

**Decision date:** 17 February 2025

## Summary

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The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Customs Department (**Department**) for customs duty paid by specific business importers for specific imported vehicles. The Department decided the records were exempt under sections 25(1)(b) (commercial value), 25(1)(c) (adverse effect on commercial interests) and 23(1) (personal information).

The Information Commissioner has found that the Department was justified, in part, to rely on section 25(1)(c) to refuse access to parts of the records but was not justified to rely on section 25(1)(b) to withhold any of the records. The Information Commissioner has also found that a Third Party did not justify withholding their information under sections 25(1) or 26(1) (information received in confidence). On her own accord, the Information Commissioner has also found that parts of the records are exempt under section 23(1).

The Information Commissioner has upheld in part, varied in part and reversed in part the Department's internal review decision. The Information Commissioner has ordered the Department to disclose the records, with exempt and non-responsive information removed, in accordance with this Decision and accompanying Order, on or before **Monday, 31 March 2025**.

## Relevant statutory provisions

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Public Access to Information Act 2010: section 23(1) (personal information), section 25(1)(b) (commercial value), section 25(1)(c) (commercial interests).

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

## Background

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1. This review relates to [Decision 38/2024](#), Customs Department. The background on the relevant legislation, process for determining the appropriate duty rate and the Applicant's disagreement with the Customs Department (**Department**) is set out in paragraphs 1-6 of that decision and considered incorporated here.
2. On 31 January 2023, the Applicant made PATI request No. 717 to the Department, asking for customs duty paid by specific business importers for specific imported vehicles. The request sought:
  - a. any correspondence from the Department, including the Collector of Customs and named public officers, regarding the Applicant or their business from November 2022 to 31 January 2023 (**item 1**);

- b. the date when The Bermuda Customs Tariff Chapter 87 heading 87.03 came into force (**items 2**);
  - c. the date of any amendments to section 87.03, and what the amendments were, if any (**item 2A**);
  - d. records of the duty rate three named businesses paid for specifically described imported vehicles (**item 3**);
  - e. the date when the businesses listed in number 3 above paid said duty rate (**item 4**); and
  - f. any correspondence between the Collector of Customs and a specific business and individual regarding a specific vehicle (**item 5**).
3. On 24 April 2023, the Department issued an initial decision wherein it provided disclosure for items 1, 2 and 2A. In respect of items 3-5, the Department explained that the responsive records were exempt in accordance with sections 23 and 25(1)(b) and (c).
  4. On 25 April 2023, the Applicant asked for an internal review.
  5. On 22 May 2023, the Department issued an internal review decision, affirming the refusal based on sections 23(1), 24(1)(b), (d) and (e), 25(1)(a), (b) and (c) as well as 26(1) of the PATI Act.
  6. On 29 May 2023, the Applicant made a timely application for an independent review by the Information Commissioner, challenging the Department's reliance on sections 23(1), 24(1)(b), (d) and (e), 25(1)(a), (b) and (c) as well as 26(1) to refuse items 3-5 of the request.

## Investigation

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7. The Information Commissioner's Office (**ICO**) accepted the application as valid on 20 June 2023, on the basis that the Applicant had made a PATI request to a public authority and had asked that public authority for an internal review. The ICO also confirmed the issues the Applicant wanted the Information Commissioner to review.
8. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application because submissions from the public authority were required to justify its reliance on the exemptions.
9. The ICO notified the Department of the valid application on 22 June 2023 and asked for the responsive records. On 6 July 2023, the Department submitted the records for this

review and [Decision 38/2024](#) as well as a schedule of records. The records in this review were records 28-33 and related to only two of the three businesses named by the Applicant. For the third business, no responsive records were located.

10. On 25 January 2024, the ICO asked for clarification regarding the exemptions relied upon in the Department's internal review decision and what was listed in the schedule of records. On 29 January 2024, the Department confirmed that the only exemptions relied upon before the Information Commissioner was section 25(1)(b) and (c), and the issues in this review were revised.
11. During a lengthy facilitated resolution involving this review and [Decision 38/2024](#), the Applicant agreed to accept anonymised data for much of the requested information and the Department was willing to provide this information. As noted in [Decision 38/2024](#), this resolved the Applicant's access to all the non-exempt information available. The Applicant, however, continued to seek the requested information for the specific vehicles imported by the three named companies in this review. This Decision addresses records 28-33 responsive to items 3-5 of PATI request number 717.
12. As required by section 47(4) of the PATI Act, the ICO invited the parties to make representations. In addition to the information provided by both parties during the facilitated resolution, the Department made submissions to the ICO during an in-person meeting on 22 July 2024 and the Applicant made written submissions on 19 February 2024. Two Third Parties were also invited to make submissions on 24 January 2025. One of the Third Parties provided submissions on 10 February 2025. No submission was received from the other Third Party.

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

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13. The Information Commissioner has considered all relevant submissions, or parts of submissions, made by the parties. She is satisfied that no matter of relevance has been overlooked.

#### ***Preliminary issue – lack of responsive records for the third named company***

14. On 15 January 2025, the Applicant queried whether additional information existed, which related to the third named company's importation of a specific model of car.
15. The issues in this review were limited to whether the Department was justified to rely on the relevant exemptions to refuse access to the responsive records. During the investigation, no records were provided to the ICO for the specific third company for the

specific type of vehicle referenced by the Applicant in item 3 of the PATI request, as noted above in paragraph 9.

16. When the ICO sought copies of the withheld records in this review, none were found for the third company. The Department provided the ICO with information for searches using the importer's Customs Automated Processing System (**CAPS**) identity number for both the business and an associated individual. No records were found for motor vehicles.
17. During the resolution process in [Decision 38/2024](#), Customs Department, the Department provided a spreadsheet of anonymised information about the vehicles on the same boat as the Applicant's vehicle, which the Department compiled from the Bermuda Customs Declaration (**BCD**) forms submitted by the importer or agent. None of the described vehicles on that anonymised spreadsheet matched the specific vehicle described in the PATI request in this review.
18. Considering the above, the Information Commissioner has not expanded the issues in this review to address whether the Department held additional records related to the third named company. The findings and conclusions in this Decision are limited to consideration of the exemptions applied to the located records.

*Information with commercial value – section 25(1)(b)*

19. Section 25(1)(b) allows a public authority to refuse access to a record if it consists of information with a commercial value and disclosure would, or could reasonably be expected to, destroy or diminish the value of such information. The commercial value exemption is subject to exceptions in section 25(2) that set out particular circumstances when the exemption cannot apply.
20. The PATI Act does not define 'commercial value'. As the Information Commissioner explained in [Decision 09/2019](#), Department of Public Lands and Buildings, information may have commercial value because it is important to the performance of the owner's commercial activities or because it can be sold for value to an arms-length buyer, i.e. intrinsic commercial value.<sup>1</sup>
21. A public authority, or third party, must consider the following question when seeking to justify reliance on the exemption for information with commercial value:<sup>2</sup>

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<sup>1</sup> See [Decision 09/2019](#), Department of Public Lands and Buildings, at paragraph 170.

<sup>2</sup> See [Decision 09/2019](#), Department of Public Lands and Buildings, at paragraph 174.

- [1] Does any exception in section 25(2) apply?
  - [2] Does the information have commercial value, and can the specific nature of the commercial value be described?
  - [3] What is the destruction or diminishment of the commercial value of the information that could occur?
  - [4] How could disclosure cause this destruction or diminishment?
  - [5] Could it reasonably be expected to occur under the circumstances?
  - [6] If the exemption is engaged, does the balance of the public interest still require disclosure?
22. A public authority, or third party asserting its rights under section 25(1)(b), bears the burden of showing that, on the balance of probabilities, the exemption is justified.

*Public authority's submissions*

23. The Department explained that the Customs Tariff Act 1970 is updated every April 1<sup>st</sup> each year with new rates, new classifications and new customs procedure codes (**CPC**). When items are imported, the items are classified in accordance with the First Schedule to the Act. The Schedule contains various chapters. It was submitted that Chapter 87 of the Act provides the duty rate that is to be paid for motor cars and other motor vehicles principally designed for the transport of persons, including station wagons and racing cars. It was further explained that the tariff code relevant to this review was code 8703.238: 'other vehicles valued in excess of \$10,000'. The general rate of duty for this particular tariff code is 75% on the first \$10,000: 150% on the value in excess of \$10,000.<sup>3</sup>
24. When questioned about why the 35% rate is sometimes applied, the Department explained that the 35% rate in CPC 4220 is reserved for certain passenger motor cars licensed as trucks, which qualify for an end-use relief, i.e. where the vehicle is used for the transport of goods.<sup>4</sup> It was further submitted that the application of CPC 4220 can be made upon importation. The CPC in the BCD is checked by the Department before it is released to the importer.

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<sup>3</sup> See the [First Schedule to the Customs Tariff Act 1970](#), at page 412.

<sup>4</sup> See the [Fifth Schedule to the Customs Tariff Act 1970](#), at page 37.

25. In respect of second-hand cars, the Department explained that the standard practice for the importation of second-hand cars requires the Transport Control Department's advance approval.
26. Its initial decision explained that the information in the records requested contained trade secrets, information with commercial value which would be, or could reasonably be expected to be destroyed or diminished by disclosure and information which, if disclosed, could reasonably have an adverse effect on the commercial interest of the imports to whom the information related.

#### *Applicant's submissions*

27. The Applicant explained their concerns about the inequity of the Department charging different people different duty rates for the same items. The Applicant noted the tariff they were charged and their understanding of how such tariffs should be calculated. The Applicant also argued that the Department's refusal to disclose the tariff rates it charged others was not supportable.
28. With respect to all the commercial information exemptions, the Applicant stated that the tariff rate is not a trade secret. The Applicant also expressly stated that the PATI request did not seek the amount of duty paid but simply the duty percentage or rate.

#### *Third Party's submissions*

29. The Third Party, through legal counsel, asserted that the amount paid for the imported vehicle was exempt information under section 25(1), without further explanation.

#### *Discussion*

30. As an initial matter, item 3 sought only the duty rate, which is contained in records 28 and 29, the standard BCD Forms, and record 33, correspondence between the Department and a Third Party. Item 4 sought only the dates of payment, and the vehicle release dates found in records 30 and 31, which are the Department's BCD activity history logs for processing the two BCD forms. Records 28-31 and 33 also contain references to the precise value of the imported vehicles, along with other information such as the Third Parties' business addresses.
31. As the Applicant submitted, the PATI request did not seek the value of the vehicles, or the amount paid to import them. In light of one of the Third Party's objection to disclosure of this information, the information in the records about the exact amount paid for the imported vehicles has been redacted as nonresponsive and is not considered for the exemptions.

[1] Did any exception in section 25(2) apply?

32. None of the exceptions in section 25(2) applied. Specifically, the two companies to whom the information related did not consent to disclosure.

[2] Did the information have commercial value, and could the specific nature of the commercial value be described?

33. On its face, none of the responsive information in the records falls within the definition of 'commercial value' in paragraph 20, above. In the absence of further explanation by the Department or Third Party, reliance on this exemption is not considered further.

*Conclusion*

34. The Information Commissioner is not satisfied that the Department or Third Party was justified in relying on section 25(1)(b) to refuse access to records 28-31 and 33.

***Adverse effect on commercial interests – section 25(1)(c)***

35. A public authority, or a third party asserting its rights, may rely on section 25(1)(c) to deny access to a public record whose disclosure would, or could reasonably be expected to, have an adverse effect on the commercial interests of any person to whom the information relates. This commercial interest exemption is subject to exceptions in section 25(2), which set out circumstances when the exemption cannot apply.
36. A public authority, or third party, must consider these questions when seeking to justify the exemption for information with commercial value:<sup>5</sup>

[1] Does any exception in section 25(2) apply?

[2] Who is the person to whom the information relates?

[3] What are the commercial interests of this person that are of concern?

[4] What adverse effect could disclosure cause?

[5] How likely is this to occur?

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

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<sup>5</sup> See [Decision 09/2019, Department of Public Lands and Buildings](#), at paragraphs 170-174.



37. A public authority, or third party asserting its right under section 25(1)(c), bears the burden of showing to the Information Commissioner that, on the balance of probabilities, the exemption was justified.

*Public authority's submissions*

38. The Department's submissions are set out in paragraphs 23-26 above.

*Applicant's submissions*

39. The Applicant's submissions are set out in paragraphs 27-28 above.

*Third party's submission*

40. The Third Party's submissions on section 25(1) are noted above in paragraph 29.

*Discussion*

[1] Did any exception in section 25(2) apply?

41. As noted above, none of the exceptions in section 25(2) applied.

[2] Who was the person to whom the information relates?

42. The commercial information related to the two named companies.

[3] What were the commercial interests of this person that were of concern?

43. Both companies engage in commercial services for profit. Their commercial activities require the use of vehicles with a commercial license, including passenger motor cars licensed as trucks.

[4] What adverse effect could disclosure have caused?

[5] How likely was this to occur?

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

44. Disclosure could not cause any adverse effect on the commercial interests of the two companies. The information on the standard BCD form does not, for example, include bank account information, trade secrets or any details concerning the company's business practices. Rather, most of the information is ascertainable through public observation of the companies, such as a company's address or the make and model of a newly imported vehicle.

45. To the extent that the information on the forms is not readily visible through observation, the disclosure of some of this information would have no impact whatsoever on the ability of the companies to continue offering their services for profit. This includes the Department's activity history log that was an administrative document tracking contacts with importers or routine correspondence with the Department about importation, not the companies' business activities. Other information can be determined through reference to the published Customs Duty Rates. It is quite clear to the public when a company has imported a passenger motor car that has been licensed as a commercial truck. Both the make and model of the vehicle is visible, as well as the distinct truck license. The Third Party has provided no explanation as to how disclosure of the remaining information in the records would cause prejudice to the company's commercial interests.
46. Arguably, the only information that could have an adverse effect on the companies' commercial interests are the assigned CAPS IDs or other reference numbers for the companies, which are not public or publicly ascertainable information. Disclosure of this information could reasonably allow another individual to submit a BCD using the company's CAPS ID. This would result in the company's loss of time and money to resolve, and would constitute an adverse effect.
47. Because there is no public interest supporting disclosure of this information, it comes within the exemption in section 25(1)(c).

#### *Conclusion*

48. The Information Commissioner is satisfied that the Department was justified to rely on section 25(1)(c) to withhold parts of records 28-31 and 33 but was not justified in doing so for record 32 or the remainder of records 28-31 and 33. The Department and Third Party were not justified in relying on section 25(1)(c) to withhold the remaining responsive parts of the records.

#### ***Other exemptions – sections 25(1)(a), 25(1)(d), 26(1)(a) and 26(1)(b)***

49. The Third Party summarily states that its commercial information is also exempt under sections 25(1) and 26(1).
50. These provisions in the PATI Act include additional separate exemptions for the following information: 25(1)(a) (trade secrets); 25(1)(d) (information, the disclosure of which would prejudice negotiations); 26(1)(a) (information given in confidence with the understanding that it would be held in confidence and its disclosure would prevent the public authority from receiving such information in the future and it is information

needed to fulfil the public authority's functions; and 26(1)(b) (information which, if disclosed, would constitute a breach of a duty of confidence).

51. On their face, none of the records related to the Third Party would fall within these exemptions. Without further explanation from the Third Party, the Information Commissioner is not satisfied that any of these additional exemptions applied.

### ***Personal information – section 23***

52. Under section 23(1) of the PATI Act, public authorities may deny public access to records or parts of records which consist of personal information. Section 24(1) broadly defines 'personal information' as information recorded in any form about an identifiable individual, subject to certain exclusions to the definition in 24(2) and exceptions to the exemption in section 23(2) that are not applicable in this review.
53. The personal information exemption is subject to the public interest test. Records which are found to be exempt under section 23(1) would still have to be disclosed, if the public interest would, on balance, be better served by disclosure instead of non-disclosure. In considering the public interest test for disclosure of personal information, the following factors have to be taken into consideration:<sup>6</sup>
- a. Whether disclosure will 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 of the circumstances. Evaluating the fairness of any disclosure may include consideration of the following:
    - i. Whether sensitive personal information is involved?
    - ii. What would be the consequences upon the individual of disclosure?
    - iii. What are the reasonable expectations of privacy of a person in the individual's position?
  - c. Whether disclosure of the personal information is necessary to further the public interests that have been identified.

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<sup>6</sup> [Decision 02/2019](#), [Office of the Governor](#), at paragraph 51.

54. In sum, as the Information Commissioner explained in [Decision 02/2019](#), Office of the Governor, public authorities must consider the following questions before denying public access to records under the personal information exemption:<sup>7</sup>

[1] Does the record consist of information about an identifiable individual?

[2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?

[3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

[4] If the exemption for personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure?

55. The Information Commissioner may consider the personal information exemption on her own accord, as has occurred in this review.
56. Finally, by virtue of section 3 of the [Personal Information Protection \(Transitional\) Regulations 2024](#), this review is decided under the PATI Act in effect as of 31 December 2024. This means that the amendments to the PATI Act and the PATI Regulations made by the [Personal Information Protection Amendment Act 2023](#) are not applicable to this review.

#### *Discussion*

[1] Does the record consist of information about an identifiable individual?

57. Parts of records 28-33 contain names and contact information of private individuals and public officers, including the Collector of Customs. Record 33 also contains the signature of the Collector of Customs.

[2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?

58. None of the exclusions in section 24(2) apply. Specifically, the exception in section 24(2)(a) does not apply because the names and contact information of the public officers relate to them individually and is not information associated with their post or functions.

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<sup>7</sup> [Decision 02/2019](#), Office of the Governor, at paragraph 56.

[3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

59. None of the exceptions to the exemption apply. Specifically, the private individuals have not consented to the disclosure of their personal information.

[4] If the exemption for personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure?

60. The public has an interest in furthering the transparency and accountability regarding the Department's consistent application of duty rates. This interest would be furthered by the disclosure of the name of the Collector of Customs on decision making documents and communications in parts of records 32 and 33. The disclosure of any of the other personal information in the records, including the contact information for the Collector of Customs, would not further any public interest.
61. The Collector of Customs is the Department's executive officer with outward facing accountability to the public for decision making. The Collector of Customs has a lesser expectation of privacy for her decision making memorialised in external communications related to routine importation processes. It would have been fair under the circumstances to disclose her name in records 32 and 33.
62. Further, disclosure was necessary to further the public interest identified above. The Collector of Customs has the final determination on the correct duty rate. Transparency and accountability for these determinations can only be achieved when the public can assure themselves that the officer with final decision-making authority did, indeed, make the decision.

### *Conclusion*

63. The Information Commission is satisfied that the personal information in parts of records 28-33 was exempt under section 23(1), except where the balance of the public interest required disclosure of the name of the Collector of Customs in parts of records 32 and 33.

### *Conclusion*

64. The Information Commissioner finds that that the Department was justified to rely on section 25(1)(c) to withhold parts of records 28-31 and 33 but was not justified in doing so for record 32 or the remainder of records 28-31 and 33.

65. The Information Commissioner further finds that the Third Party did not justify the application of the exemptions in sections 25(1) or 26(1) to any of the responsive parts of the records.
66. The Information Commissioner further finds that the personal information in parts of records 28-33 was exempt under section 23(1), except where the balance of the public interest required disclosure of the name of the Collector of Customs in parts of records 32 and 33.
67. Finally, although it was not raised by the parties, the Information Commissioner notes that after the issuance of the Department's internal review decision, but prior to this Decision, the [Customs Department Act 1952](#) was amended effective 28 December 2024. These amendments included the addition of section 14 (application of the PATI Act) to the Customs Department Act, which creates a statutory prohibition on disclosure of records or information obtained pursuant to sections 7 to 11 of the Customs Department Act. Although the application of section 14 of the Customs Department Act would be considered if the records at issue were requested today, at the time of this Department's handling of this PATI request, section 14 did not exist.
68. When conducting an independent review of the Department's internal review decision, the Information Commissioner has discretion to consider subsequent developments when determining what course of action to order under section 48 of the PATI Act, but is not required to do so. In fact, exercising discretion to consider the impact of subsequent events on the steps that should be ordered under section 48 of the PATI Act should be quite exceptional.<sup>8</sup>
69. Here, the Information Commissioner exercises her authority under section 48 to order disclosure of the requested records, with redactions as noted above, without applying the subsequent 2024 amendments to the Customs Department Act for the following reasons. First, the extended duration of this review and the related, [Decision 38/2024, Customs Department](#), was due, in part, to the parties' successful negotiations facilitated by the ICO to resolve as much of their dispute as possible. All parties as well as the ICO engaged in these discussion in good faith. Second, at no point during these negotiations or the preparation of the Customs Department Act Amendment 2024 was the

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<sup>8</sup> See cases from the UK Upper Tribunal recognizing that when exercising discretion to decide the further steps to be taken for disclosure when finding that the public authority did not comply with the UK's Freedom of Information Act 2000, it would be exceptional to not order disclosure: [ICO v Gaskell](#), [2011] UKUT (AAC), at paragraphs 24-31; [Home Office v ICO and Cobain](#), [2015] UKUT 27 (AAC), at paragraphs 25-27; [Sturmer v ICO and North East Derbyshire District Council](#) [2015] UKUT 568 (AAC), at paragraph 92.

Information Commissioner made aware of or consulted about the addition of a new statutory provision that removes Customs Department records from public access. Finally, the redacted records disclose very limited and non-personal information, no Third Party objected, and the Department had already located the records. Disclosure will not cause any administrative or other burden on the Department.

## Decision

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The Information Commissioner finds that the Customs Department (**Department**) was justified to rely on section 25(1)(c) to refuse access to certain commercial information in parts of the records but was not justified on relying on this exemption or section 25(1)(b) to withhold the remaining parts of the responsive records. The Information Commissioner also finds that the Third Party did not justify withholding information related to it under any of the exemptions in sections 25(1) or 26(1). Finally, the Information Commissioner, on her own accord, finds that the personal information in some of the records is exempt under section 23(1) of the PATI Act.

In accordance with section 48 of the PATI Act, the Information Commissioner:

- upholds the Department's denial of public access to parts of records 28-31 and 33 under section 25(1)(c);
- varies the Department's denial of public access to parts of records 28-33 under section 23(1);
- reverses the denial of access to the remaining parts of the records; and
- orders the Department to disclose records 28-33, with exempt and non-responsive information removed,

as directed by this Decision Notice and the accompanying Confidential Annex and Order, which form part of the Decision, on or before **Monday, 31 March 2025**.

## Judicial Review

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The Applicant, the Customs Department, the Third Parties, 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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The Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Customs Department 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.

Gitanjali S. Gutierrez  
Information Commissioner  
17 February 2025



## Appendix I: Relevant statutory provisions

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### Public Access to Information Act 2010

#### Personal information

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

#### Commercial information

- 25 (1) Subject to subsections (2) and (3), a record that consists of the following information is exempt from disclosure—

...

(b) information, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure;

(c) information, the disclosure of which would have, or could reasonably be expected to have, an adverse effect on the commercial interests of any person to whom the information relates; or

...

- (3) A record shall be disclosed if disclosure of it is in the public interest.

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