

Decision Notice

Decision 07/2025: Bermuda Police Service

Misconduct and offence records

Reference no: 2021003

Decision date: 21 February 2025

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Police Service (**BPS**) for misconduct and criminal offence allegation records. The BPS administratively denied part of the request under section 16(1)(a) of the PATI Act because the records did not exist or could not be located, while it granted access to records responsive to other parts of the request. The BPS refused access to the remainder of the records under sections 29(1) (deliberations of public authorities), 30(1)(a) (operations of public authorities) and 34(1)(b) (prejudice to law enforcement). During the Information Commissioner's review, the BPS invoked section 4(1)(b)(v) to withhold one of the records.

In this Decision, the Information Commissioner has found that the BPS did not conduct a reasonable search for records before administratively denying some parts of the request. The Information Commissioner has also found that the BPS was correct that the PATI Act did not apply to one record by virtue of section 4(1)(b)(v). The Information Commissioner has further found that the BPS justified its reliance on sections 29(1) and 30(1)(a) to withhold some of the records, but did not justify its reliance on sections 29(1), 30(1)(a) and 34(1)(b) to withhold the remaining records. Finally, on her own accord, the Information Commissioner has found that certain personal information was exempt from disclosure under section 23(1) of the PATI Act.

The Information Commissioner has ordered the BPS to conduct a reasonable search for items 5, 6 and 7 of the PATI request; to issue a new initial decision on items 5, 6 and 7, including responsive records located during this review; and to disclose parts of records 3, 3A and 30 with exempt information removed, as directed by this Decision Notice and the accompanying Confidential Annex and Order, which form part of this Decision, on or before **Friday, 4 April 2025**.

Relevant statutory provisions

Public Access to Information Act 2010: section 4(1)(b)(v) (application); section 12(2)(b) (access to records); section 16(1)(a) (record does not exist or cannot be found); section 21 (public interest test); section 23 (personal information); section 24 (definition of personal information); section 29 (deliberations of public authorities); section 30(1)(c) (operations of public authorities); section 34(1)(b) (prejudice to enforcement of law).

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

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

Background

1. As background, on 11 December 2020, the Bermuda Police Service (**BPS**) executed a search warrant against two police officers, based on allegations of disaffection, among other things. The authorisation and legality of the search warrant has been the subject of various court proceedings and internal conduct matters in the BPS, as well as related to the topics of multiple PATI requests since 2021. In a 2024 settlement of a judicial review brought by one of the individuals subject to the search warrant, the BPS admitted that the “warrant in question was not properly obtained and was, therefore, unlawful”.¹
2. In 2021, the former Governor had also ordered an investigation of the former Commissioner of Police (**COP**) under the Police (Conduct) Orders 2016 (**Conduct Orders**) for allegations of misconduct or gross misconduct. The investigation was discontinued following the resignation of the former COP, in accordance with Order 19 of the Conduct Orders.²
3. In part because of the public attention drawn to the BPS over these developments and subsequent related PATI requests, the Information Commissioner received a significant number of applications for independent reviews beginning in 2020 and has issued six decisions touching upon these issues³ and resolved additional applications. By 2020, the Information Commissioner’s Office (**ICO**) began staggering these reviews to enable the BPS to respond to the ICO’s investigations. The ICO also worked with various applicants to address overlapping aspects of the PATI requests or identify earlier PATI requests that were overtaken by more recent developments or newer requests.
4. The present review is the final one from the early set of PATI requests arising from the events in 2020 and 2021 related to the BPS. As noted below, it also reflects the culmination of efforts from all the parties to organise and process these significant public access requests. Undoubtedly, further and more recent PATI requests will continue to be made on these topics, and decisions will be issued by this Office. The Information Commissioner acknowledges, though, the significance of this Decision, and thanks the various requesters, the BPS and the multiple officers in the ICO whose efforts have

¹ See Royal Gazette, ‘[BPS to pay Monk \\$200,000](#)’, 21 March 2024.

² For further background, see [Decision 17/2023](#), [Bermuda Police Service](#), at paragraphs 1-3.

³ See [Decision 17/2023](#), [Office of the Governor](#); [Decision 43/2023](#), [Bermuda Police Service](#); [Decision 07/2024](#), [Bermuda Police Service](#); [Decision 10/2024](#), [Bermuda Police Service](#); [Decision 11/2024](#), [Bermuda Police Service](#); and [Decision 14/2024](#), [Bermuda Police Service](#).

supported the processing of these reviews and safeguarded the public's access to information about these events.

5. For this request, a year after the 2020 search and a few months after the former COP resigned, the Applicant made a PATI request on 15 December 2021 asking for various internal records related to the search warrant, the alleged criminal disaffection offences against a BPS officer, a related misconduct inquiry against the same officer, and the officer's misconduct complaint against another officer.
6. Specifically, the request sought:

Internal records related to the search warrant, the related misconduct inquiry and the alleged criminal disaffection offences against the BPS officer

- a. "The document created date and who it was created by" (**item 1**); and the "email thread [between named officers] containing the sending and receiving of the document attached" (**item 2**).⁴
- b. Record of the dates of emails sent by the former COP, the former Deputy Commissioner of Police (**DCOP**) and four specific, named individuals and anybody else in the BPS's Professional Standards Department (**PSD**) to anybody at the Department of Public Prosecutions (**DPP**), including the BPS officer's name regarding the alleged disaffection offences where no charges were approved (**item 4**).
- c. Emails between the BPS's PSD and the DPP mentioning that the BPS officer would not be prosecuted for criminal disaffection; and internal emails that spoke about the officer being involved in racial harassment (**item 12**).
- d. Emails from 1 October 2020 to 15 December 2021 between the former COP, former DCOP and three specific, named individuals that (i) related to the Cayman enquiry, parties damaging the BPS's reputation and ongoing misconduct inquiries, and (ii) included any mention of the BPS officer's name, from 1 October 2020 to 15 December 2021 (**item 5**); and texts and instant messages sent by the specific, named individuals in item 5 on the same topic (**item 6**).
- e. Record of the dates of emails sent and received by the former COP, former DCOP and six specific, named individuals and other members of the BPS's PSD, where the

⁴ As noted below, it was agreed between the parties that items 1 and 2 were referring to the December 2020 search warrant.

BPS officer was named as a suspect in criminal disaffection charges, from June 2020 to July 2021 (**item 7**).

- f. The body camera footage from the BPS's execution of the search warrant on 11 December 2020, including a specific statement made by one of the officers executing the search warrant (**item 11**).
- g. All imaging done on the devices taken from the officer's home on 11 December 2020 and record of the dates for when those devices were accessed (**item 14**).
- h. The body camera footage from the BPS's search on 27 September 2021, including a specific statement from one of the officers executing the search warrant, and the portion of footage where officers provided the search form to the accused officer (**item 15**).
- i. An investigation report by a specific, named individual about the officer under investigation submitted between September and November 2021 (**item 13**).

Records about the BPS officer's misconduct complaint against another officer and another matter

- j. The agreement between the BPS and the British Transport Police for the secondment of a named individual, including the misconduct procedure (**item 9**).
 - k. All emails, texts and instant messages sent and received by the former DCOP about the BPS officer's formal misconduct and performance complaint against another officer made in October 2020, including the assessment that should have been done (**item 8**); and emails from the former DCOP to anybody in the British Transport Police about the BPS officer's complaint against the other officer (**item 10**).
 - l. An email from the Governor to the former DCOP about an 'apology' owed to an individual sent between 1 September and 15 December 2021 (**item 3**).
7. The BPS did not issue an initial decision.⁵
8. On 16 March 2022, the Applicant requested an internal review.

⁵ On 31 January 2022, the BPS's Information Officer emailed the Applicant, attempting to extend the initial decision period by 6 weeks from 1 February 2022, which the Information Officer stated was the original due date. In [Decision 16/2022](#), [Bermuda Police Service](#), at footnote 1, the ICO clarified how the initial decision was actually due by 26 January 2022. This meant the BPS's opportunity to extend the initial decision period had expired.

9. On 17 May 2022, the BPS issued an internal review decision.⁶ The BPS administratively denied items 3 and 6 under section 16(1)(a) because the records did not exist or could not be found. It further relied on section 29(1) (deliberations of public authorities) to deny records responsive to items 2, 4, 5, 7, 12 and 13. It also relied on section 30(1)(a) (operations of public authorities) to deny access to records responsive to items 13 and 15. Finally, it denied access to responsive records to item 11 under section 34(1)(b) (prejudice to law enforcement).
10. The BPS's internal review decision then granted access to four records responsive to items 8, 9 and 10 and disclosed the records to the Applicant. The BPS also thought it was correctly providing access to the requested record for item 1, but as noted below at paragraph 33, some misunderstanding arose over which "document" the PATI request was referring to in items 1 and 2, which was clarified during this Information Commissioner's review. The BPS also granted access to the records responsive to item 14 subject to a certain manner of access.
11. On 17 May 2022, the Applicant asked for an independent review by the Information Commissioner, challenging the completeness of the response and the BPS's reliance on sections 16(1)(a), 29(1), 30(1)(a) and 34(1)(b).

Investigation

12. The ICO accepted the application as valid on 8 June 2022, 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.
13. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate for this application because submissions from the BPS were required to justify the administrative denial and its reliance on the exemptions to withhold the responsive records.
14. The ICO formally notified the BPS of the valid application on 17 August 2022 and asked for the responsive records.
15. On 30 August 2022, the ICO and the BPS discussed items 1 and 2. The BPS accepted its initial misunderstanding of items 1 and 2 and confirmed it now understood that items 1

⁶ The internal review decision was issued during the course of a 'failure-to-decide' review, which resulted in [Decision 16/2022, Bermuda Police Service](#).

and 2 referred to the search warrant. Item 1 sought a screenshot of the document properties for the search warrant, which the BPS agreed to disclose (record 3). The BPS invoked section 34(1)(b) to withhold the records responsive to item 2 because the judicial review referenced above in paragraph 1 was ongoing at the time of its internal review decision. The ICO subsequently confirmed with the BPS, on 13 February 2025, that an additional record 3A, a screenshot of the document properties for an earlier version of the search warrant, would be included in this review.

16. On 15 March 2023, the ICO also met with the Applicant, who confirmed the following day that they abandoned their challenge to the BPS's response to item 10 and part of its response to item 9 (requesting the secondment contract). The Applicant still challenged the BPS's response to that part of item 9 seeking records about the misconduct procedure to be applied to the officer under the contract. During the meeting with the ICO, the Applicant clarified their information needs for each remaining item. Later, the ICO also identified that the record responsive to item 3 of this PATI request was considered by the Information Commissioner in [Decision 10/2024, Bermuda Police Service](#), and the record was disclosed by the BPS. Therefore, item 3 is not considered in this Decision.
17. On 4 December 2023, the BPS provided the ICO with additional documents that had been part of the BPS's disclosure in the judicial review described above in paragraph 1 as part of the ICO's handling of various independent reviews of the BPS's PATI request decisions. After having reviewed these files, the BPS did not object to some of those records being included as part of this Information Commissioner's review to remove gaps in the BPS's searches.
18. On 26 February 2024, the Applicant requested an update on the status of the review, clarified items 1 and 2 of the PATI request, and provided submissions regarding additional records that they believed existed.
19. On 16 April 2024, the ICO wrote to the BPS again to request that it provide the withheld records in this review. Between 26 April 2024 and 27 June 2024, the BPS provided copies of 15 records (some of which were not responsive). The BPS was unable to finalise providing the ICO with access to the body camera footage responsive to items 11 and 15, but its contents were discussed.
20. As required by section 47(4) of the PATI Act, the parties were invited to make representations to the Information Commissioner. The BPS provided submissions on 8 May 2024 in response to the ICO's second request for the responsive records. In the ICO's 15 August 2024 correspondence to the BPS, the ICO sought the BPS's submissions

for specific questions, and provided the BPS with a schedule of 34 potentially responsive records, some of which were identified by the ICO as records already provided to the ICO as part of other BPS-related reviews. For the newly located records, the BPS was invited to indicate whether it wished to disclose or withhold the records to allow for consideration of these records in this review, or otherwise was informed that the Information Commissioner would order the BPS to process the newly located records in accordance with the PATI Act and issue a new initial decision.⁷ The Applicant provided information throughout the review but did not respond to the ICO's formal invitation to make submissions.

21. In August 2024, the BPS raised concerns that the settlement agreement arising out of the judicial review in paragraph 1 impacted this review. In response to the ICO's invite, the Applicant disagreed with this position, therefore the ICO informed the BPS that the Information Commissioner would proceed with this review.
22. After the non-responsive and previously disclosed records were removed, this Decision has considered the BPS's reliance on exemptions to refuse access to 24 records: 3, 3A, 4-8, 10-20, 28-30 and 32-34.

Information Commissioner's analysis and findings

23. 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.

Complete and accurate response; reasonable search – section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations

24. Section 12(2)(b) of the PATI Act requires public authorities to make every reasonable effort to respond to PATI requests completely and accurately. Regulation 5 of the PATI Regulations 2014 requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. Regulation 5(2) requires a public authority to document its efforts if it has been unable to locate any record. Read together, these provisions require public authorities to conduct a reasonable search in response to a PATI request.

⁷ These were numbered as records 23-27, 35 and 36.

25. In cases where the reasonableness of a public authority's search is in question, the Information Commissioner's task is to assess whether such search was reasonable in accordance with the provisions of the PATI Act and Regulations. It is not her role to assess whether a public authority should or should not hold a record as a matter of good public administration.
26. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following:
 - [1] the quality of the public authority's analysis of the request;
 - [2] the scope of the search that it decided to make on the basis of that analysis; and
 - [3] the rigour and efficiency with which the search was then conducted.
27. The public authority bears the burden to establish that the search conducted to locate records responsive to a PATI request was reasonable.⁸

Public authority's submissions

28. As noted above, the BPS accepted that the "document" in items 1 and 2 of the PATI request referred to the search warrant.
29. The BPS was unable to provide details concerning its searches for records responsive to items 5, 7 and 8 as well as the remaining part of item 9, when processing this request.

Applicant's submissions

30. The Applicant confirmed that their original request was asking for the authors of the information used to obtain a search warrant executed on 11 December 2020.
31. The Applicant shared with the ICO the basis for their claim that the former COP was instrumental in composing the information to obtain the search warrant and provided copies of email correspondence between the former COP and other individuals within the BPS. The Applicant asserted that it was clear that the former COP was one of the persons sending emails showing that he had authored the information as was sought in their PATI request – and that the former COP's emails should have been among the records located by the BPS for their PATI request.

⁸ See [Decision 04/2017](#), [Department of Health](#), at paragraphs 37-49, and more recently [Decision 08/2023](#), [Ministry of Finance Headquarters](#), at paragraphs 28-31.

32. For item 8, the Applicant understood that the current COP had shared with some BPS officers the complaint made against a certain officer. On that basis, the Applicant believed that the BPS held more records of the current COP's correspondence on this complaint than had been identified and disclosed in response to this PATI request.

Discussion

Item 1

33. With respect to its analysis of item 1, during this review, the BPS accepted that it initially misunderstood what the Applicant was seeking. The way item 1 was phrased and the reference to a "document attached" led to some confusion. Because this was not clarified during its handling of the request, the BPS's analysis of item 1 was not adequate. In turn, its inadequate analysis led the BPS to limit the scope of its search in a manner that was not sufficient to locate responsive records.
34. These deficiencies in the search were remedied during this Information Commissioner's review through the BPS's cooperation. Two responsive records were identified, records 3 and 3A, which were screenshots of the document properties for a draft and later version of the search warrant application. The screenshots showed the author, the date the document was created, the date it was last modified, and the person that last modified the document. The BPS had agreed to disclose these records but does not yet appear to have done so. For this reason, records 3 and 3A are considered below in this Decision only for the Information Commissioner's invocation of the exemption in section 23 to redact personal information.

Items 5, 7 and 8

35. In the absence of submissions from the BPS, it is difficult to assess its analysis of items 5, 7 and 8 of the PATI request. Similarly, it is difficult to affirm the completeness of the BPS's internal review decision on these items.
36. Although the BPS provided two records responsive to item 5 during this review (records 29 and 30), the ICO examined its other files for BPS-related reviews as well as the information provided by the Applicant, and located records which appeared responsive to items 5 and 7. Based on these records that were not located by the BPS, it appears that the BPS either did not have an adequate analysis of items 5 and 7, or did not conduct its search with sufficient rigour. As a result, its search for responsive records for items 5 and 7 was not reasonable, nor were these deficiencies remedied during this review.

37. For item 8, the BPS did not locate any responsive records and did not explain why. The Information Commissioner accepts that she cannot conclude that the BPS conducted a reasonable search in the absence of submissions supporting this.
38. However, due to the unique circumstances of the ICO's reviews for the BPS in the past few years, the Information Commissioner notes the BPS's submissions regarding its search in a separate review, [Decision 31/2024](#), [Bermuda Police Service](#). The nature of the records considered in part of [Decision 31/2024](#) overlapped with the records responsive to item 8 in this review, specifically records related to a BPS officer's complaint against another officer. The Information Commissioner notes that, based on the submissions made in [Decision 31/2024](#) and the outcome of that decision, it is unnecessary to require the BPS to conduct further searches for records responsive to item 8 of this PATI request. To do so would also be disproportionate. This is because the BPS previously did conduct a reasonable search for records responsive to item 8 of this request and, as [Decision 31/2024](#) concluded, any additional records that might be located as a result of a fresh search for this PATI request would be exempt from disclosure.

Item 9

39. As noted above, the remaining part of item 9 sought the procedure in place for the handling of a misconduct complaint against a seconded officer. The BPS had disclosed the secondment agreement to the Applicant, with some personal information redacted, in its internal review for this request. The Applicant questioned the completeness of the response provided by the BPS.
40. In reviewing the BPS's response, the Information Commissioner notes that the misconduct procedure was set out in the disclosed secondment agreement. Clauses 9.1 to 9.4 of the agreement stated:

9.1 The Sending Party shall continue to deal with any Management Issues concerning the Seconded officer during the Term, where relevant, following consultation with the Receiving Party.

9.2 Either party shall use its reasonable endeavours to provide any information, documentation, access to its premises and employees and assistance (including but not limited to giving witness evidence) to the other party to deal with any management issues concerning the Seconded officer whether under that party's internal procedures or before any court of tribunal. Either party shall reimburse Expenses incurred by the other party in doing so subject to the prior approval of the relevant party.

9.3 The Receiving Party shall have day-to-day control of the Seconded's activities but shall promptly refer any Management Issues concerning the Seconded that come to its attention to the Sending Party.

9.4 The Receiving Party shall inform the Sending Party as soon as reasonably practicable of any other significant matter that may arise during the Term relating to the Seconded or the Seconded's employment.

41. 'Management Issues' were defined under the secondment agreement as 'all those matters under the Employment Contract requiring action, investigation and/or decisions by a party including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; periods of annual, sick or other leave; absence of the Seconded for any other reason; any complaint about the Seconded (whether or not that would be dealt with under a party's disciplinary procedure) and any complaint or grievance raised by the Seconded (whether or not that would be dealt with under a party's grievance procedure)'. The 'Sending Party' was defined as the British Transport Police in Appendix 1 of the secondment agreement.
42. Based on this, the Information Commissioner accepts that the BPS had provided a complete and accurate response to item 9 of the PATI request when it disclosed the secondment agreement to the Applicant.

Conclusion

43. The Information Commissioner is not satisfied that the BPS had conducted a reasonable search for items 1, 5, 7 and 8 in accordance with section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations.
44. During this review, the BPS remedied its search for records responsive to item 1 only, and the Information Commissioner is satisfied that it would be unnecessary and disproportionate to require the BPS to conduct a new search for records responsive to item 8. Finally, the Information Commissioner is satisfied that the BPS had provided a complete response to item 9 in accordance with section 12(2)(b) of the PATI Act.

Record did not exist or could not be found – section 16(1)(a)

45. Public authorities are entitled under section 16(1)(a) to administratively deny a request if a requested record does not exist or cannot be found after all reasonable steps have been taken to find it.

46. Regulation 5 of the PATI Regulations requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. In determining whether a public authority's search was reasonable, the Information Commissioner considers the following:

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

[2] the scope of the search that it decided to make based on that analysis; and

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

47. The specific circumstances in each case will inform the Information Commissioner's assessment.

48. Finally, the public authority bears the burden to establish, on the balance of probabilities, that responsive records did not exist or could not be found after all reasonable steps had been taken to find them.⁹

Public authority's submissions

49. With respect to item 6, the BPS provided the ICO with a copy of an email that was sent to the BPS's Digital Policing Division on 18 August 2022 requesting access to enable a search of the emails, texts and instant messages for the former COP and one of the named individuals. That email also stated that separate requests had been made directly to the other named individuals for records responsive to item 6.

50. The BPS was unable to locate any response received from the Digital Policing Division and the other named individuals from 2022.

51. The BPS also stated that they had sent an email to the BPS's IT department in December 2024 to see if the text and instant messages could be accessed. The BPS has not provided a further response.

52. In terms of the BPS's understanding of item 6 of the PATI request, which related to the topic in item 5, the BPS stated that item 5 related to discussions between BPS officers about information received from a source with a pseudonym that had alleged corruption within the BPS. The BPS explained that, because of that information, the BPS contacted

⁹ See [Decision 04/2017](#), [Department of Health](#), at paragraphs 37-49, and, more recently [Decision 01/2023](#), [Ministry of Legal Affairs and Constitutional Reform Headquarters](#), at paragraphs 30-35.

the Royal Cayman Police to seek assistance with their electronic searches, because the BPS did not have the capability to perform that function at that time.

Applicant's submissions

53. The Applicant's submissions are set out above, at paragraphs 30-32.

Discussion

54. The BPS's reliance on section 16(1)(a) to administratively deny item 6 is considered.

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

55. The BPS understood that item 6 of the PATI request related to the topic and individuals described in item 5. The BPS also showed its understanding that the request sought texts and instant messages. Its analysis of this straightforward request was adequate.

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

56. The BPS asked the Digital Policing Division and the named individuals to search the appropriate mobile devices for texts and instant messages.
57. Although it sent out the initial requests to the Digital Policing Division and named individuals, the BPS has not provided any results from these searches to the ICO. It is unclear whether any searches were conducted or if some reason arose that text and instant messages were not accessible.
58. In the absence of further submissions by the BPS, the Information Commissioner is not satisfied that the scope of the search was adequate.

Conclusion

59. The Information Commissioner is not satisfied that the BPS justified its reliance on section 16(1)(a) of the PATI Act to refuse item 6 of the PATI request.

Application of the PATI Act – section 4(1)(b)(v)

60. Sir Christopher Clarke explained in [Information Commissioner v Attorney General](#), paragraph 18, that the "PATI Act excludes from its operation the records of a substantial number of public bodies to which the Legislature has decided that it shall not apply so long as such records do not relate to the general administration of the relevant body". Among these are records that were obtained or created by the DPP in the course of carrying out its functions, as set out in section 4(1)(b)(v) of the PATI Act.

61. The provision in section 4(1)(b)(v) does not mean that the public does not have the right to ask for records obtained or created by the DPP. The public can make a PATI request for those records, and public authorities must respond to their requests in accordance with the provisions of the PATI Act.¹⁰ A public authority is justified to deny public access to those records if it can show that the records fall under the category prescribed in section 4(1)(b)(v).
62. Section 4(2) provides that records relating to the general administration of the DPP continue to fall within the scope of the PATI Act.
63. To determine whether a record falls outside the scope of the PATI Act by virtue of section 4(1)(b)(v), the following must be considered:

[1] Was the record obtained or created by the DPP?

[2] Was the record obtained or created by the DPP in the course of carrying out its functions?

[3] Does the record relate to the DPP's general administration and come within the scope of the PATI Act by virtue of section 4(2)(b)?

Public authority's submissions

64. The BPS explained that record 28 consisted of correspondence between officers in the BPS and the Director of the DPP.

Applicant's submissions

65. The Applicant accepted that section 4 would apply to all emails involving the DPP, but queried whether the Information Commissioner could order disclosure of the emails' details, such as the dates, because this information would not come within section 4.

Discussion

66. Section 4(1)(b)(v) is considered for record 28 (responsive to item 4 of the PATI request), an email exchange with the Director of the DPP.

¹⁰ Sir Christopher Clarke explained in [Information Commissioner v Attorney General](#) [2023] CA (Bda) 6 Civ, at paragraph 75: "I would hold that, until it has been accepted by the requester, or determined by the Commissioner, that the records which are sought are excluded from the operation of the PATI Act...they cannot be treated as so excluded. Accordingly, [the PATI requester] was entitled, under section 45, to apply to the Commissioner for a review of the decision made by the [Head of Authority] in respect of the records which she sought, and the Commissioner was entitled to commence a review of the matter" under section 47.

[1] Was the record obtained or created by the DPP?

67. Record 28 was an email exchange between the Director of the DPP and officers within the BPS, which was a record obtained or created by the DPP.

[2] Was the record obtained or created by the DPP in the course of carrying out its functions?

68. The DPP obtained and created record 28 while providing an opinion on whether certain criminal offences could be prosecuted. This is part of the DPP's core constitutional functions under sections 71(2) and 71A(b) of the Constitution of Bermuda, set out in Schedule 2 to the [Bermuda Constitution Order 1968](#).

[3] Did the record relate to the general administration of the DPP and come within the scope of the PATI Act by virtue of section 4(2)(b)?

69. The emails in record 28 did not relate to the general administration of the DPP and therefore did not come within the scope of the PATI Act by virtue of section 4(2)(b).

Conclusion

70. The Information Commissioner is satisfied that the PATI Act did not apply to record 28 by virtue of section 4(1)(b)(v) because it was created by the DPP in the course of carrying out its constitutional functions.
71. Because the whole record falls outside the scope of the PATI Act, the Information Commissioner has no statutory authority to order disclosure of the dates and other details of the record.

Prejudice to investigations – section 30(1)(a)

72. Public authorities may refuse to disclose a record under section 30(1)(a) of the PATI Act if its disclosure could reasonably be expected to prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by, or on behalf of, the public authority; or the procedures or methods used to conduct them.¹¹

¹¹ The exemption in section 30(1)(a) of the PATI Act is similar to section 30(1)(a) of the Irish Freedom of Information (**FOI**) Act 2014:

A head may refuse to grant an FOI request if access to the record concerned could . . . reasonably be expected to—(a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of an FOI body or the procedures or methods employed for the conduct thereof.

73. The exemption in section 30(1)(a) is subject to the public interest test. This means that if the exemption in section 30(1)(a) is engaged, the records must still be disclosed if the balance of the public interest favours disclosure, as set out in section 21 of the PATI Act.
74. In the absence of a definition of ‘tests, examinations, investigations, inquiries or audits’ as well as ‘procedures or methods’ in the PATI Act and the Interpretation Act 1951, these terms are to be read in their plain, ordinary meaning. Relevant to this Information Commissioner’s review were the following definitions:¹²
- a. ‘investigation’ is defined as ‘the action of investigating something or someone’, and ‘investigate’ means to ‘carry out a systematic or formal inquiry to discover and examine the facts of (an incident, allegation, etc.) so as to establish the truth’; and
 - b. ‘procedures’ is defined as ‘an established or official way of doing something’ or ‘a series of actions conducted in a certain order or manner’.
75. The exemption in section 30(1)(a) may apply to either ongoing or future investigations. It may also be applied to the procedures or methods used to conduct the relevant investigations.
76. For the exemption to apply, the relevant investigation must be conducted by or on behalf of the public authority concerned.
77. For the purposes of section 30(1)(a), ‘prejudice’ should be understood as a harm that is actual, real and significant to the effectiveness of investigations or the procedures used to conduct the investigation. Public authorities must be able to show that the effect caused by disclosure would be negative or detrimental in a way that undermines the effectiveness of the investigations or their procedures.
78. As the Information Commissioner explained in [Decision 27/2019](#), Bermuda Health Council, ‘effectiveness’ in section 30(1)(a) refers to the ability of the investigations or the procedures to produce or lead to a result of some kind. If, after disclosure, the investigations or their procedures could still be used to achieve their purposes, section 30(1)(a) may not be applicable.
79. To appropriately rely on the exemption in section 30(1)(a), public authorities should also be able to show that disclosure ‘could reasonably be expected to’ cause the harm. This

¹² Oxford Dictionary of English, 3rd Edition.

means a public authority must be able to show that their expectations on the negative impact of disclosure are likely, plausible or possible based on real and substantial facts.

80. As summarised in [Decision 27/2019](#), Bermuda Health Council, to withhold a record under section 30(1)(a), a public authority must ask:

- [1] What is the relevant test, examination, investigation, inquiry or audit, or the procedures or methods employed to conduct it?
- [2] How can disclosure cause prejudice to the effectiveness of the relevant test, examination, etc., describing the circumstances or events that can lead to the prejudice?
- [3] Whether the prejudice could reasonably be expected to occur under the circumstances?
- [4] If the exemption is engaged, whether the balance of the public interest requires disclosure of the records?

81. A public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify its reliance on section 30(1)(a) to deny access to the records.

Public authority's submissions

82. The BPS relied on section 30(1)(a) to refuse access to records 29, 30, 32 and 34. Records 29 and 30 were email threads related to the BPS's Cayman enquiry. Record 32 was an investigator's report on a pending misconduct allegation against an officer. Finally, record 34 was a BPS officer's body camera video of the 27 September 2021 search being carried out as part of an arrest.
83. In its internal review decision, the BPS stated that the information contained in the records may subsequently be used at a specific pending criminal trial or internal conduct matter pending at the time of the BPS's decision. The BPS emphasised that there was a relevant statutory process for the disclosure of the material requested in either case.
84. The BPS further stated that the process for disclosure of the records under the Conduct Orders should be adhered to, i.e. if there is an interview or a referral to a misconduct hearing (citing Orders 16(6) and 20(1)(c) of the Conduct Orders). The BPS also stated that the process under section 26 of the Conduct Orders would (and should) dictate when and if an accused officer would be provided with the record, not the process for public access disclosure under the PATI Act.

Applicant's submissions

85. The Applicant did not make specific submissions on section 30(1)(a). See the Applicant's submissions relevant to the public interest test at paragraph 31.

Discussion

86. The BPS's reliance on section 30(1)(a) is considered for records 29, 30, 32 and 34.

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

87. Records 29 and 30 involved the BPS's investigation into specific alleged criminal conduct. The investigation of these particular allegations was completed as of the time of the internal review decision. A final determination had been made that no criminal charges were warranted. Record 29 also detailed some of the specific procedures and methods used to investigate the criminal offence.
88. Record 32 was an investigation summary for a pending disciplinary investigation under the Conduct Orders. It also related to the procedures under the Conduct Orders that the BPS employed to conduct the pending investigation, along with any future investigations.
89. The footage from record 34 was related to a criminal matter pending at the time of the internal review decision.

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

90. For records 29 and 30, the Information Commissioner finds that disclosure could not have caused any prejudice to the effectiveness of the particular investigation because it was concluded, and its outcome had already been determined.
91. Record 29, though, could have caused prejudice to the effectiveness of the specific procedures and methods used to conduct the investigation. The record had information about the capacity of the BPS, specific investigation partners and methods used to obtain evidence. Such details could assist individuals in evading these methods and procedures by exploiting gaps in the BPS's capacity.
92. For record 32, disclosure could have caused prejudice to the procedures employed in the pending disciplinary procedures. The procedures employed by the BPS to conduct disciplinary proceedings have been considered by the Information Commissioner in [Decision 15/2020, Bermuda Police Service](#), paragraphs 39-45. Record 32 was a standard investigatory record, the disclosure of which is dictated by the Conduct Orders. As was

found in [Decision 15/2020](#), disclosure under the PATI Act would have circumvented the procedures and decision-making authority set out in the Conduct Orders, and rendered them less effective, if not meaningless.

93. Finally, the BPS has not explained how disclosure of record 34 (the body camera footage of the 27 September 2021 search) could have caused prejudice to the effectiveness of the relevant investigation, or the procedures or methods employed to conduct it. Although a potential criminal charge was still pending related to the body camera footage, disclosure of the record would not have prejudiced the investigation, where the accused would have access to such evidence as a matter of course. Disclosure also would not lessen the effectiveness of the BPS's ability to execute an arrest in the future by allowing the accused to evade the arrest, for example.
94. In the absence of submissions by the BPS, nothing was established that disclosure of record 34 could have caused prejudice to the effectiveness of the disciplinary investigation or the criminal investigation.
95. Considering the above, section 30(1)(a) is not considered further for records 30 and 34.

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

96. For record 29, the prejudice could reasonably have been expected to occur. The Information Commissioner notes that the offence involved a generally expanding area of criminal offences. It was always an area in which the BPS was seeking to strengthen its capacity to investigate.
97. For record 32, the prejudice also could reasonably have been expected to occur under the circumstances. Again, as was stated in [Decision 15/2020](#), paragraphs 49-50, the effectiveness of the procedures used to conduct disciplinary investigations depend on parties' adherence to them. Disclosure would allow parties to circumvent the provisions of the Conduct Orders, as explained above. Under the circumstances of this review, disclosure could reasonably have been expected to undermine, if not eliminate, the decision-making authority given to the BPS investigator and appropriate authority. The Information Commissioner further notes that, at the time of the request, the disciplinary process had not been concluded, as it was for the appropriate authority (who was the DCOP at the time) to determine whether to accept the BPS investigator's findings.

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

98. Neither the BPS nor the Applicant have made specific submissions on the public interest during this review.
99. As the Information Commissioner stated in [Decision 15/2020](#), paragraph 52, “the procedures laid out in the Conduct Orders afford the BPS the authority to decide whether it will provide certain information and documents to officers subjected to a disciplinary investigation. The procedures in the Conduct Orders balance the need for a fair process with the BPS’s need to protect its other interests outlined in the Conduct Orders, such as safeguarding other pending disciplinary or criminal investigations or other public interests. Inherent in the procedures under the Conduct Orders is a need to protect broader public interests.”
100. In the circumstances, the public interest is better served by maintaining the orderly administration of justice through an established, comprehensive framework for addressing disciplinary proceedings.

Conclusion

101. The Information Commissioner is satisfied that the BPS has justified its reliance on section 30(1)(a) to withhold records 29 and 32 but not records 30 and 34.

Deliberations of public authorities – section 29

102. A public authority may rely on section 29(1) to deny access to a public record whose disclosure would, or could reasonably be expected to, undermine the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.
103. As the Information Commissioner explained in [Decision 14/2021](#), Office of the Governor, releasing the records at issue must undermine a public authority’s ‘deliberative process’. This refers to the consideration or evaluation of competing arguments, information and facts with a view to making a decision.¹³ A deliberative process is, at its most basic, the

¹³ See [Decision 02/2019](#), Office of the Governor, at paragraph 168.

thinking process of an agency.¹⁴ This exemption is in place to safeguard the integrity of this process for public authorities' decision making.

104. A public authority must show that, at a minimum, disclosure 'could reasonably be expected to' undermine a public authority's deliberative process. The plain meaning of 'undermine' is to "lessen the effectiveness, power or ability of, especially gradually or insidiously"¹⁵. Whether it is reasonable to think that the harm will occur will depend on the circumstances of each case, including the timing of the request, whether the issue is still live, and the actual content and sensitivity of the information in question.
105. The exemption in section 29(1) does not apply to certain categories of information, such as factual or statistical information (section 29(2)(a)) or information in the nature of the reasons of a public authority for making a particular decision (section 29(2)(d)).
106. 'Factual information' is not defined in the PATI Act or the Interpretation Act. The Irish Freedom of Information Act 2014 has a provision similar to section 29(2)(a) of the PATI Act, and the Irish Information Commissioner's discussion of that provision offers a useful definition of 'factual information' in this context. The Irish Information Commissioner has adopted the following plain meaning of "factual" as: "Something that has really occurred or is actually the case; something certainly known to be of this character; hence, a particular truth known by actual observation or authentic testimony, as opposed to what is merely inferred, or to a conjecture or fiction; a datum of experience, as distinguished from the conclusions that may be based upon it".¹⁶ Factual information is "distinguishable from information in the form of [a] proposal, opinion or recommendation".¹⁷
107. Generally, the release of factual information will not reveal deliberations or otherwise threaten a public authority's deliberative process. Two contexts arise when this distinction between factual and deliberative materials may not stand.¹⁸ First, in some records, the factual information may be so inextricably connected with the deliberative

¹⁴ See Western Australia's Office of the Information Commissioner (October 2001), [FOI Guide No. 3, Deliberative Process](#), on page 1.

¹⁵ Oxford Dictionary of English (3rd ed. 2010).

¹⁶ Ireland's Office of the Information Commissioner (August 2015), [Guidance Note, Freedom of Information Act 2014 Section 29 – Deliberations of FOI Bodies](#), at paragraph 3.3.1. The decisions cited in the Guidance Note relied on the definition provided by the Oxford English Dictionary.

¹⁷ See [Decision 14/2021, Office of the Governor](#).

¹⁸ See, for example, Office of the Australian Information Commissioner (December 2016), [FOI Guidelines, Part 6 – Conditional exemptions](#), at paragraph 6.73.

material that disclosure would reveal and cause harm to the public authority's deliberation. The second context arises when a record contains selective facts collated from a larger group of facts, and the distilling of facts itself is a deliberative process. It indicates the facts the author found relevant or significant and those deemed irrelevant or insignificant to the matter at hand.

108. The exemption in section 29(1) is subject to the public interest test. If the exemption is engaged, the records or parts of records must still be disclosed if the public interest would, on balance, be better served by disclosure than by non-disclosure.
109. In sum, when applying the exemption in section 29(1), a public authority must ask:
- [1] What is the relevant deliberative process involved?
 - [2] Does any of the information fall within the exceptions listed in section 29(2)?
 - [3] Could disclosure of the record reasonably be expected to undermine the identified deliberative process of a public authority?
 - [4] If the exemption is engaged, does the balance of the public interest require disclosure?
110. A public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify its reliance on the exemption to deny access to the records.

Public authority's submissions

111. It appeared from the BPS's 8 May 2024 submissions that it recognised that it could not have justified its reliance on section 29(1) for records 4, 5, 7, 12 and 13, and thus invoked alternate grounds in this review. Beyond this, the BPS did not explain why the other relevant records were exempt under section 29.

Applicant's submissions

112. The Applicant did not make specific submissions on section 29. See the Applicant's submissions relevant to the public interest test at paragraph 31, above.

Discussion

113. Section 29 is considered for records 4-8 and 10-20 as well as record 30.

[1] What was the relevant deliberative process involved?

Deciding the content of the search warrant

114. Records 4-8 and 10-20 were responsive to item 2 of the PATI request. The relevant deliberative process for these records was the decision on the content of the search warrant, including the relevant facts, how to phrase its content, and the charges to be included. The records involved discussions of drafts of and revisions to the search warrant. The relevant BPS officers were engaged in a decision-making process that required the weighing of options and recommendations to reach a decision on the content of the search warrant.

Record 30

115. Record 30 did not contain deliberative material. Rather, it memorialised instructions and the steps in a course of action that had already been determined. It did not contain, for example, various options and a preferred recommendation, or a weighing of potential ways forward.
116. Because it did not contain deliberative material, record 30 is not considered further for section 29(1).

[2] Did any of the information fall within the exceptions listed in section 29(2)?

117. Although records 4-8 and 10-20 contained some factual information, it was inextricably intertwined with the deliberations. As a result, the exception for factual information in section 29(2)(a) was inapplicable.

[3] Could disclosure of the record reasonably have been expected to undermine the identified deliberative process of a public authority?

118. For records 4-8 and 10-20, disclosure of the various drafts and revisions could have reasonably been expected to undermine the deliberative process by having a 'chilling effect' where BPS officers would not engage in deliberations with full frankness and candour. The loss of frankness and candour in the drafting of a search warrant would damage the quality of the deliberation and lead to poorer decision making.

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

119. There were important public interests at issue regarding records 4-8 and 10-20. On the one hand, the public has a very strong interest in the BPS being publicly accountable where there has been any potential impropriety in the drafting of a search warrant. This

is particularly relevant in circumstances where a search warrant can affect a person's fundamental rights and freedoms, as protected in the [Bermuda Constitution Order 1968](#).¹⁹ When the concern about impropriety is associated with the highest-ranking law enforcement post in Bermuda, the Commissioner of Police, this public interest is heightened.

120. On the other hand, the public also has an interest in ensuring that the BPS can carry out its duties in an orderly manner. The criminal justice system it operates within includes an orderly process for challenging the legality of search warrants or the conduct of an officer. Considering this, public disclosure of the routine back-and-forth while drafting a search warrant would risk creating an unnecessary public spectacle that distracts the resources of the BPS and undermines confidence in its work.
121. In this case, the Applicant believed there was evidence that the former COP had been improperly involved in the drafting of the search warrant, and his involvement would have been seen as a conflict of interest.
122. Having carefully reviewed records 4-8 and 10-20, the balance of the public interest fell in favour of non-disclosure. There was nothing in records 4-8 and 10-20 that raised any question about irregularities in the drafting of the search warrant and their disclosure would not serve the public interest in accountability and transparency of the BPS. The Information Commissioner notes the Applicant's submission but affirms that records 4-8 and 10-20 did not include any references to communications with the former COP.

Conclusion

123. The Information Commissioner is satisfied that the BPS justified its reliance on section 29(1) to withhold records 4-8 and 10-20 but not record 30.

Prejudice to the enforcement of, compliance with, or administration of a law – section 34(1)(b)

124. A public authority may rely on section 34(1)(b) to deny access to a public record whose disclosure would, or could reasonably be expected to, prejudice the enforcement of, compliance with or administration of any law.

¹⁹ These include a person's right to liberty and privacy of their home and other property.

125. The public authority must clearly identify the relevant law and show that the harm to the enforcement of, compliance with, or administration of that law could reasonably be expected to occur.
126. 'Prejudice' means bringing about a negative or detrimental effect, as the Information Commissioner explained in [Decision 01/2018](#), Bermuda Tourism Authority, paragraphs 81-86.
127. The minimum likelihood of harm is that prejudicing the prevention, detection or investigation of a possible breach of law 'could reasonably be expected to' occur. This is a lesser likelihood of harm compared to 'would', which is a high probability that the harm will occur. 'Reasonably' refers to what a reasonable person may expect considering all circumstances of the case, and they must be likely, plausible or possible based on real and substantial factual grounds.
128. The exceptions and public interest test that apply to section 34 differ from all other harm-based exemptions in the PATI Act. A public authority must consider the public interest test only when a record falls within a category listed in section 34(2)(a) as an exception. If the record does not fall within a section 34(2)(a) exception, the public interest test does not apply.
129. Where disclosure of a record falling within section 34(2)(a) would be in the public interest, the exemption does not apply, and the record must be disclosed as it properly falls within an exception. If, however, the public authority decides the public interest weighs against disclosing a record falling within section 34(2)(a), the exclusion no longer applies, and the exemption may be justified to withhold the record.
130. In sum, when applying the exemption in section 34(1)(b), a public authority must ask:
- [1] What is the relevant law?
 - [2] How could disclosure prejudice the enforcement of, compliance with, or administration of that law?
 - [3] Could this reasonably be expected to occur?
 - [4] Does the record, or any part of it, fall within an exception listed in section 34(2)(a), and, if yes, would its disclosure be in the public interest?
131. A public authority bears the burden of satisfying the Information Commissioner that, on the balance of probabilities, it has provided sufficient support to justify its reliance on section 34(1)(b) to deny access to the records.

Public authority's submissions

132. The BPS submitted that there was a judicial review in relation to the search warrant and that the judicial review process provided for the discovery of material related to the matter, if required. The BPS submitted, therefore, that public disclosure of the record would prejudice the compliance with or administration of a law.

Applicant's submissions

133. The Applicant did not make specific submissions on section 34(1)(b). See the Applicant's submissions relevant to the public interest test at paragraph 31, above.

Discussion

134. The BPS's reliance on section 34(1)(b) is considered for record 33.

[1] What was the relevant law?

135. Although the BPS did not make specific submissions, based on the internal review decision, the BPS appears to be referring to the law related to the discovery of documents in the judicial review process.²⁰

[2] How could disclosure have prejudiced the enforcement of, compliance with, or administration of that law?

136. The BPS has not made submissions regarding how disclosure of record 33 could have prejudiced the enforcement of, compliance with, or administration of the law related to the discovery of documents in a judicial review. There is nothing, generally, that prevents a requester from utilising the process under the PATI Act to seek disclosure of records that may also be subject to an order for discovery in judicial review proceedings.
137. In the absence of an explanation from the BPS, section 34(1)(b) is not considered further for record 33.

Conclusion

138. The Information Commissioner is not satisfied that the BPS was justified in relying on section 34(1)(b) to refuse access to record 33.

²⁰ Applications for discovery in judicial review proceedings are governed by the provisions of Order 53 rule 8 of the [Rules of the Supreme Court 1985](#) (although Order 53 also permits applications for discovery to be made pursuant to Order 24 of the Rules).

Personal information – section 23

139. 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 section 24(2) and exceptions to the exemption in section 23(2) that are not applicable in this review.
140. 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:²¹
- 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 was 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.
141. 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:²²
- [1] Whether the record consists 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))?

²¹ See [Decision 02/2019, Office of the Governor](#), at paragraph 51.

²² See [Decision 02/2019, Office of the Governor](#), at paragraph 56.

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

142. The Information Commissioner may consider the personal information exemption on her own accord, as has occurred in this review.

143. 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 Regulations made by the [Personal Information Protection Amendment Act 2023](#) are not applicable to assessing the records at issue in this Decision.

Discussion

144. Section 23 is considered for records 30, 33 and 34 where the Information Commissioner found they were not exempt under the other provisions discussed above as well as for records 3 and 3A where the BPS has agreed to disclose the records but has not yet done so.

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

145. Records 3, 3A and 30 were written documents containing the following information about identifiable individuals: the names, titles and contact information of the former COP, officers and employees of the BPS; and information about individuals' family and personal life.

146. Records 33 and 34 were videos of the execution of search warrants that included the images and voices of the attending BPS officers along with the accused and the family members of the accused who were present during the search.

[2] Did the information fall within any exclusion to the definition of personal information (section 24(2))?

147. None of the exclusions applied for the identifying information of individuals throughout the records. While some individuals were officers or employees of public authorities, the relevant information did not relate to their positions or functions but, instead, related to the performance of their positions or functions. The Information Commissioner has consistently found that this type of information does not fall within the exclusion in section 24(2)(a).

[3] Did any exception to the exemption in section 23(2) apply to the record?

148. None of the exceptions in section 23(2) applied to information about the individuals in the records.

[4] If the exemption for personal information in section 23(1) was engaged, did the balance of the public interest require disclosure?

Records 3, 3A and 30

149. With respect to the written records, the public has a strong interest in accountability and specifically in further transparency surrounding questions about alleged maladministration or abuse of power on behalf of the former COP. As noted in [Decision 17/2023, Office of the Governor](#), paragraph 19, an investigation was launched under the Conduct Orders into allegations of misconduct or gross misconduct against the former COP. The investigation was discontinued in accordance with Order 19 of the Conduct Order as a result of the former COP's resignation.
150. These important public interests would be furthered by disclosure of records that evidenced the former COP exercising his authority, providing direction, or issuing instructions related to the preparation or execution of the relevant search warrants.
151. Here, disclosure of the names in records 3 and 3A would not reveal involvement by the former COP in the preparation of the search warrants. Disclosure of the records would not, therefore, further the identified public interest. The balance of the public interest favoured maintaining the exemption.
152. In any event, the officers named in records 3 and 3A had a reasonable expectation that their names as the author or editor of the document would not be made public and any disclosure would have been unfair. The officers who created the original document and then carried it through its revisions were under instructions and did not have outward facing, publicly accountable positions within the BPS. The Information Commissioner notes that records 3 and 3A included no reference to the former COP. For this reason, disclosure would also have been unnecessary. A less intrusive approach to others' privacy, which would still further the identified public interest, would be to locate and identify any written instructions from the former COP, regardless of the officer the instructions were given to.
153. The balance of the public interest favoured maintaining the exemption for the names in records 3 and 3A.

154. In contrast, record 30 involves correspondence between the former COP and other officers. Disclosure of the record would further the public interest identified above.
155. For the BPS officers, their expectation of privacy is the same as described in paragraph 152 above. Further, record 30 contained information about the former COP's private life, for which he continued to have a reasonable expectation of privacy. Disclosure of any of this information would be unfair to the individuals. The balance of the public interest favoured maintaining the exemption for these parts of the records.
156. In contrast, the former COP did not have a reasonable privacy expectation with responses from supervisees that touched on his role as the former COP contained in record 30. As the highest-ranking law enforcement officer in Bermuda, the former COP could not have had a reasonable expectation of privacy concerning responses from his supervisees to their boss.
157. Further, disclosure of these parts of the records was necessary to further the identified public interest. Disclosing them would reveal how the communications from the former COP were received and responded to.
158. The balance of the public interest required maintaining the exemption for the personal information in record 30 in part.

Records 33 and 34

159. As noted above and more broadly, the public has an interest in knowing whether the execution of a search warrant or a search conducted under the [Police and Criminal Evidence Act 2006 \(PACE\)](#) has been an abuse of power.
160. Here, however, disclosure of the body camera footage would not further that public interest. The significant public accountability questions arising from the searches involved the preparation and authorisation of the search warrant and the instructions to carry out the PACE search, not the way the police activity was executed.
161. Even if disclosure would further the relevant public interest, it would not be fair to the individuals to disclose their personal information. The police officers executing the searches would have had a reasonable expectation that the footage would not be released into the public domain with their identifying information. Although there would have been a reasonable expectation that such footnote may be entered into evidence in a court case if the search warrant was challenged or in support of any criminal charges, this is a very different expectation than having the footage disclosed publicly.

162. The Information Commissioner also notes that it would have been disproportionate to require the BPS to produce redacted copies of the body camera footage with all the individuals' faces and identities blurred out. Such redactions to a video, in accordance with section 18 of the PATI Act, would have been an unnecessary expenditure of time and resources, and thus not practicable. Ample documentation exists of the preparation and authorisation of the search warrant. The incremental contribution of any information gleaned from the redacted body camera footage would not have been proportionate to the expense of preparing those redactions.
163. The balance of the public interest required maintaining the exemption for records 33 and 34.

Conclusion

164. The personal information exemption in section 23(1) applied to records 33 and 34 in full and to the identifying information in parts of records 3, 3A and 30.

Conclusions

165. In conclusion, the Information Commissioner finds that the BPS:
- a. did not conduct a reasonable search for items 1, 5, 7 and 8 of the PATI request in accordance with section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations, and that the BPS rectified its search for item 1 during this review and that further searches for records responsive to item 8 would be disproportionate;
 - b. provided a complete and accurate response to item 9;
 - c. was not justified in relying on section 16(1)(a) to refuse item 6;
 - d. was justified in relying on section 4(1)(b)(v) to refuse access to record 28;
 - e. was justified in relying on section 30(1)(a) to refuse access to records 29 and 32, but not records 30 and 34;
 - f. was justified in relying on section 29(1) to refuse access to records 4-8 and 10-20, but not record 30; and
 - g. was not justified in relying on section 34(1)(b) to refuse access to record 33.
166. Further, on her own accord, the Information Commissioner has found that records 33 and 34 and parts of records 3, 3A and 30 contained exempt personal information under section 23(1).

Decision

The Information Commissioner finds that the Bermuda Police Service (**BPS**) did not conduct a reasonable search for items 1, 5, 7 and 8 of the request under the Public Access to Information (**PATI**) Act 2010, in accordance with section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations 2014, but the BPS provided a complete and accurate response to item 9 in accordance with section 12(2)(b). The Information Commissioner also finds that the BPS did not conduct a reasonable search for item 6 before administratively denying it under section 16(1)(a). The Information Commissioner further finds that the BPS was justified in relying on sections 4(1)(b)(v), 30(1)(a) and 29(1) to refuse access to certain records but was not justified in relying on them or 34(1)(b) to refuse the remaining records. Finally, on her own accord, the Information Commissioner finds that certain personal information in some records was exempt under section 23(1).

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

- affirms that the BPS's internal review decision: complied with section 12(2)(b) for item 9; correctly determined that the PATI Act did not apply to record 28 by virtue of section 4(1)(b)(v); and properly relied on section 29(1) to refuse access to records 4-8 and 10-20 and on section 30(1)(a) to refuse access to records 29 and 32;
- varies the BPS's refusal of access for records 33 and 34 and part of record 30 to section 23(1);
- reverses the BPS's internal review decision on items 5, 6 and 7;
- reverses the refusal of access for parts of records 3, 3A and 30.

The Information Commissioner therefore orders the BPS to:

- disclose records 3, 3A and 30, with exempt information removed as instructed in the Confidential Annex (Appendix II);
- conduct a reasonable search for records responsive to items 5, 6 and 7 of the PATI request; and
- issue a new initial decision on the records newly located during this review (records 23-27, 35 and 36) and on items 5, 6 and 7 of the PATI request,

as directed by this Decision Notice and the accompanying Order, which form part of this Decision, on or before **Friday, 4 April 2025**.

Judicial Review

The Applicant, the Bermuda Police Service, or any person aggrieved by this Decision has the right to seek and apply for judicial review to the Supreme Court in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.

Enforcement

The Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Bermuda Police Service 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
21 February 2025

Appendix I: Relevant statutory provisions

Public Access to Information Act 2010

Application

- 4 (1) Subject to subsection (2), this Act does not apply to—
- ...
 - (b) records obtained or created by any of the following public authorities in the course of carrying out their functions—
 - ...
 - (v) the Department of Public Prosecutions;
 - ...
- (2) The reference to records in subsection (1) does not include records relating to the general administration of —
- ...
 - (b) any public authority referred to in subsection (1)(b).

Access to records

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

Refusal of request on administrative grounds

- 16 (1) A public authority may refuse to grant a request if—
- (a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;
 - ...

Public 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—

...

Deliberations of public authorities

- 29 (1) Subject to subsections (2) and (3), a record is exempt from disclosure if it consists of information, the disclosure of which would undermine, or could reasonably be expected to undermine, the deliberative process of a public authority, including free and frank discussion and provision of advice in the course of that process.
- (2) Subsection (1) does not apply to information contained in a record that is—
- (a) factual or statistical information;
- ...
- (3) A record shall be disclosed if disclosure of it is in the public interest.

Operations of public authorities

- 30 (1) Subject to subsection (2), a record is exempt if its disclosure could reasonably be expected to—
- (a) prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of the public authority concerned or the procedures or methods employed for the conduct of those tests, examinations, investigations, inquiries or audits;
- ...
- (2) A record shall be disclosed if disclosure of it is in the public interest.

Law enforcement

- 34 (1) Subject to subsection (2), a record is exempt if its disclosure would, or could reasonably be expected to—
- ...
- (b) prejudice the enforcement of, compliance with, or administration of, any law;
- ...

Public Access to Information Regulations 2014

Reasonable search

- 5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.
- (2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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