

Decision Notice

Decision 15/2025: Bermuda Monetary Authority

Records relating to a regulated fund

Review reference no.: 2025011

Decision date: 5 September 2025

Summary

In this Decision, the Applicant had made an access request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Monetary Authority (**BMA**) for records related to an investment fund that had been operating under licence by the BMA. The BMA denied access to 13 responsive records citing section 37 of the PATI Act, on the basis that disclosure was prohibited by other legislation, namely section 31 of the Bermuda Monetary Authority Act 1969 (**BMA Act**).

On concluding an external review, the Information Commissioner has found that the BMA justified its refusal to grant the Applicant access to the records because disclosure was prohibited by section 31 of the BMA Act, thereby making the records exempt from disclosure under the PATI Act by the application of section 37 of the PATI Act.

The Information Commissioner has affirmed the decision of the BMA to refuse to grant access to the responsive records under the PATI Act.

Relevant statutory provisions

Public Access to Information Act 2010: section 37 (disclosure prohibited by other legislation)

Bermuda Monetary Authority Act 1969: section 31 (secrecy)

Background

1. On 20 November 2024, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Monetary Authority (**BMA**) asking for records related to an investment fund which had been subject to regulatory oversight by the BMA (**the Fund**). The Applicant specifically sought:
 - a. a detailed report on the delinquent loans held by the Fund, including the number of delinquent loans, the total amount of such loans, and the duration of delinquency (**item 1**);
 - b. an assessment of the potential impact of these delinquent loans on the Fund's overall financial health and liquidity (**item 2**); and
 - c. details of any measures or plans that the Fund had implemented or intended to implement to address those delinquent loans (**item 3**).
2. On 30 December 2024, the BMA issued its initial decision. The BMA refused each item of the request on the basis that section 37 of the PATI Act applied because disclosure was

prohibited by other legislation, namely section 31 of the Bermuda Monetary Authority Act 1969 (**BMA Act**). The BMA further advised the Applicant to contact the Official Receiver of Bermuda to assist with their request for records, as the Fund had been put into liquidation and was under the purview of the Official Receiver.

3. On 14 January 2025, the Applicant asked for an internal review.
4. On 19 February 2025, the BMA issued its internal review decision upholding the initial decision's reliance on both section 31 of the BMA Act and section 37 of the PATI Act.
5. On 27 February 2025, the Applicant asked the Information Commissioner to conduct an external review of the BMA's decision to refuse access to the records responsive to the PATI request.

Investigation

6. On 7 March 2025, the Information Commissioner's Office (**ICO**) accepted the application as valid under section 45 of the PATI Act, on the basis that the Applicant had made a PATI request under section 13 to a public authority, had received that public authority's decision on internal review under section 43, and had asked for an external review in writing within the six-week deadline.
7. It was 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, but resolution remained available for consideration during the external review.
8. On 18 March 2025, the ICO notified the BMA and, as required by section 47 of the PATI Act, invited the BMA to make formal submissions on the review. On 31 March 2025, the BMA confirmed that it did not wish to provide formal submissions as it was relying on the rationale provided in its initial decision and internal review decision to explain its reliance on section 37.¹
9. On 19 March 2025, the ICO met with the Applicant to discuss the background and context of the PATI request.

¹ At the start of the review, the ICO was satisfied that the BMA was sufficiently sophisticated with the use and application of both section 37 of the PATI Act and section 31 of the BMA Act. The BMA are advised by a team of attorneys and have had several reviews now by the Information Commissioner on the application of these same statutory provisions. As such, the BMA did not require any additional support from the ICO, in the form of standard investigation questions, to obtain formal submissions or representations about the BMA's reliance on the section 37 exemption.

10. On 16 May 2025, the ICO invited specific submissions from the BMA regarding its search steps taken to locate responsive records and to provide a schedule of the withheld records. The ICO also invited the BMA to either confirm whether (a) records responsive to each item of the PATI request existed or (b) the BMA intended to rely on section 16(1)(a) to administratively deny any part of the request on the basis that records did not exist or could not be found.
11. As an explanatory note, the BMA's search for responsive records became relevant to the review, to ensure that it was not applying section 37 without having conducted a reasonable search for records and without applying the exemption to a set of identified records. A public authority's reliance on an exemption under Part 4 of the PATI Act (other than section 38) implies the existence of a record, and this should be confirmed to a requester. A public authority cannot rely on the section 37 exemption in the abstract, i.e. without (a) conducting a reasonable search for responsive records, (b) deciding on the disclosability of actual records it has reviewed, and (c) notifying the requester, in its decisions, that records are held by the public authority. This is inextricably linked to the duty in section 12(2)(b) requiring public authorities to respond to requests completely, accurately and in a timely manner.
12. On 10 June 2025, the BMA sent a letter to the Applicant confirming the existence of records responsive to each item of their PATI request.
13. On 11 June 2025, with clarification on 1 July 2025, the BMA provided submissions to the ICO regarding the search steps taken and enclosed a record schedule listing the 13 responsive records. The BMA confirmed that they maintained their reliance on section 37 of the PATI Act to refuse access to the records.
14. On 17 June 2025, the ICO invited the Applicant to make formal submissions. The Applicant made ongoing submissions throughout the review, particularly on 30 June, 4 July, 10 July, 11 July and 13 July 2025.
15. On 1 July 2025, the BMA provided a finalised record schedule. The records included agreements entered into by the Fund, the liquidator's report, letters from the Fund to its shareholders, and email correspondence between the BMA and the Fund. The investigation closed having accepted that the 13 responsive records listed by the BMA formed the records under review, with no outstanding issue related to the reasonableness of the BMA's search for records.

Analysis and findings

16. As decision maker in this review, I am satisfied that the parties had reasonable opportunity to make representations and were provided opportunity for attempts at resolution. I have considered all relevant facts, submissions and evidence provided by the parties, being satisfied that no matter of relevance was overlooked.

Disclosure prohibited by other legislation – section 37

17. Section 37(1) of the PATI Act allows public authorities to refuse public access to a record whose disclosure is prohibited by a statutory provision other than the PATI Act:

Disclosure prohibited by other legislation

37 (1) Subject to subsection (6), a record is exempt if its disclosure is prohibited by any statutory provision, other than this Act.

[...]

18. The exemption in section 37(1) is an absolute exemption; i.e., it is not subject to any public interest considerations.
19. Section 37, in practice, makes allowance for public authorities with confidentiality or secrecy provisions in their governing legislation to preserve the applicable confidentiality or secrecy over records and information responsive to an access request made under Part 3 of the PATI Act. However, the application of section 37 requires further analysis by the public authority wishing to rely upon it as an exemption from disclosure under the PATI Act.
20. The ICO has issued *Guidance*² to assist public authorities in their deliberations when applying this exemption. Public authorities are guided to first identify the relevant statutory provision prohibiting disclosure they wish to rely upon and establish if the provision is mandatory. This is typically indicated by the legislative use of the word ‘shall’ in the other legislation being relied upon, and there may also be an accompanying provision setting out penalties for unauthorised disclosure.
21. If the relevant statutory provision is framed, however, with limited application—for example, applying only when particular functions or duties of a public authority are engaged—the public authority must identify and explain how the records responsive to an access request relate to those functions and duties for the statutory prohibition to apply.

² See: [Guidance: Disclosure prohibited by other legislation exemption \(section 37\)](#), (ICO, January 2023).

These kinds of provisions are commonly referred to as ‘gateways’ or ‘exceptions’ to a statutory prohibition on disclosure clause.

22. In sum, a public authority must consider the following questions when making a decision to engage section 37³:

[1] What is the statutory provision creating the mandatory prohibition on disclosure?

[2] Does the record fall within this statutory provision?

[3] Does the record fall within any exception for, or gateway to, public disclosure that is contained in the statutory provision?

23. Finally, a public authority bears the burden of showing that, on the balance of probabilities, it has provided sufficient support to justify applying the exemption.

Public authority’s submissions

24. A précis of the BMA’s position—as stated in its initial decision, its internal review decision and in later submissions in reply to the ICO’s clarifying questions—was that any/all records responsive to items 1-3 of the PATI request contained information which would have been provided by a licensed entity for the purposes of regulation or supervision by the BMA. Therefore, any such information was required to be maintained as confidential/secret by the BMA in accordance with section 31 of the BMA Act. The BMA maintained its longstanding position that section 31 is a mandatory provision prohibiting disclosure. Essentially, the BMA was reliant upon section 37 of the PATI Act to preserve the secrecy mandated by the BMA Act, thereby shielding the records and information from public disclosure.
25. The BMA further explained that it was no longer the regulator of the Fund that was the subject of the request. This was due to the Fund being in liquidation and being under the purview of the Official Receiver. The BMA also submitted that because liquidation of the Fund was approved by the Supreme Court, the BMA was obligated to respect the Court’s rulings.
26. The BMA’s decisions and submissions, taken together, did not address whether any of the gateways/exceptions specified within section 31 of the BMA Act’s secrecy provision were

³ See: Information Commissioner’s [Decision 38/2023](#), [Department of Child and Family Services](#), para. 25.

relevant. However, it is factually accepted that the BMA's position was that none of the stated gateways/exceptions applied.

Applicant's submissions

27. The Applicant provided the ICO with background information about the Fund and explained that they had been an investor in the Fund. The Applicant was of the view that the BMA had not exercised their regulatory and supervisory functions appropriately, in accordance with the BMA's mandate and *Enforcement Guide* (in place at the relevant time), in particular with regard to the protection of investors.
28. The Applicant explained that they were seeking information to understand what the BMA knew about the financial position of the Fund and when it obtained such information and, if it did not know about the Fund's financial position, the Applicant wanted records that showed that the BMA had not exercised its due diligence with regard to its regulation and supervision of the Fund.
29. With regard to the application of section 31 of the BMA Act, the Applicant submitted that section 31(1AA)(a) of the BMA Act contained a gateway provision that empowered the BMA to disclose to the Minister certain information about regulated entities where the public interest and ministerial oversight responsibilities were engaged. The provision states, 'subsection (1) does not preclude the disclosure of information to the Minister in any case in which the disclosure is to enable or assist him to discharge his statutory functions or is in the public interest.' The Applicant submitted that this gateway was applicable.
30. The Applicant explained that the matter directly impacted issues of transparency, regulatory integrity, and investor protection, all fundamental to maintaining public trust in Bermuda's financial system. The Applicant claimed that non-disclosure was potentially protecting fraudulent activities and inhibited the accountability of the BMA.
31. The Applicant submitted that given the Minister's statutory oversight function and the public interest in safeguarding investor protection and financial integrity, the BMA should have invoked the gateway provision in section 31(1AA)(a) and provided the records to the Minister. The Minister would then be in a position to assess whether the records should be released more broadly, or at the very least, whether further inquiry was warranted.
32. The Applicant further submitted that the gateway in section 31(1AA)(aa) applied, which states that the BMA is not precluded from disclosure of information, 'to the Registrar of Companies for the purpose of enabling or assisting him to discharge his statutory

functions’. The Applicant submitted that this gateway made clear that the BMA was permitted to share documents with the Registrar of Companies. The Applicant noted, however, that the books and records produced by the Official Receiver (the Registrar of Companies) were not complete. The Applicant submitted that in view of both the Registrar’s statutory role and the Official Receiver’s fiduciary obligations, the BMA’s disclosure of certain records—either to the Registrar or the Minister—would have been justified and in the public interest under the gateways provided by the BMA Act.

Discussion

[1] What was the statutory provision creating the mandatory prohibition on disclosure?

33. The BMA have relied upon section 31(1) of the BMA Act, which reads:

Secrecy

*31 (1) Except in so far as may be necessary for the due **performance of his functions under the Act** or other statutory provisions, and subject to subsections (1AA), (1B), (1C) and (1D) **any person who is, or is acting as, an officer, a servant, an agent or an adviser of the Authority shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Government or the Authority or of any person that may come to his knowledge in the course of his duties.***

[emphasis added]

34. It is now well established, for the purpose of the PATI Act, that section 31(1) of the BMA Act is a statutory provision creating a mandatory prohibition on disclosure within the meaning of section 37(1) of the PATI Act.⁴ It is also worth noting that unlawful disclosures constitute a criminal offence with severe penalties: on summary conviction a fine of \$50,000 or imprisonment of up to two years or both and on indictment a fine of \$100,000 or imprisonment for five years or both.⁵

[2] Did the records fall within this statutory provision?

35. For the section 31(1) secrecy provision to be engaged, records must fall within the meaning of ‘all matters’ and they must relate to the affairs of the Government, the BMA or any

⁴ This was first explained in the Information Commissioner’s [Decision 05/2017, Bermuda Monetary Authority](#), para. 27. It was further addressed in: [Decision 12/2019, Bermuda Monetary Authority](#); [Decision 08/2020, Bermuda Monetary Authority](#); and [Decision 01/2024, Bermuda Monetary Authority](#).

⁵ See: section 31(1A) of the BMA Act.

person. At first glance, this is a very broadly worded statutory provision. The BMA Act itself offers no assistance with interpreting the legislative meaning of ‘all matters’ or ‘person’.

36. In past Decisions, the then-Information Commissioner relied on the ordinary English meaning of ‘all’ and ‘matter’ as definitive. I find that approach instructive, and am persuaded by the analysis in [Decision 12/2019, Bermuda Monetary Authority](#), where it was set out at paragraph 29:

In the absence of a specific definition of ‘all matters’ in the BMA Act or Interpretation Act 1951, the Information Commissioner agrees with the BMA that the phrase should be read in its ordinary meaning. ‘All’ refers to the whole quantity or extent of a particular group or things and ‘matter’ means ‘a subject or situation under consideration’. The breadth of the phrase ‘all matters’ in section 31(1) of the BMA Act is therefore very broad.

37. ‘All matters’ is not constructed so broadly as to be without some legislative limitation. Although broadly defined, one must also consider the inherent limitations found within the statutory language of section 31(1). This was also addressed in [Decision 12/2019, Bermuda Monetary Authority](#), at paragraph 30:

The Information Commissioner disagrees with the BMA’s suggestion that no limiting criterion or conditions need be taken into account when applying section 31(1) of the BMA Act because of the breadth of ‘all matters’. The broad scope of this phrase is limited by the remainder of the section 31(1), which requires the matters to both (a) relate to the affairs of Government, the BMA or any person and (b) come into the knowledge of an officer, servant, agent, or advisor of BMA in the course of carrying out their duties.

38. We now go on to ask if the records related to the affairs of Government, the BMA or a person. The responsive records under review related to the affairs of a regulated fund, specifically about the financial position of that fund. For brevity of analysis, it is prudent to consider if the records related to a ‘person’.
39. ‘Person’, although not defined in the BMA Act, is statutorily defined in section 7(1) of the Interpretation Act 1951, which states:

Definitions of miscellaneous expressions

7 (1) *In every Act and in every statutory instrument—*

[...]

“person” includes any company or association or body of persons, whether corporate or unincorporate’.

40. By this definition, and in the absence of any express or implied qualifiers or context given to the specified class ‘person’ in the BMA Act’s statutory language, it is accepted that the Fund fell within the definition of a ‘person’, because the Fund was legally established as a regulated company.
41. Further, the BMA indicated in its decisions that the records would have been provided by a licensed entity for the purposes of regulation or supervision by the BMA. In other words, they came to the knowledge of officers, servants, agents or advisors of the BMA in the course of carrying out their duties. Based on the description and classes of records identified during the ICO’s investigation, I am satisfied that the records, and information contained within the records, would have likely come to the knowledge of the BMA in the course of fulfilling its duties under section 3(1)(b) of the BMA Act, specifically: ‘to supervise, regulate and inspect any financial institution which operates in or from within Bermuda’.⁶
42. By this analysis, I find that section 31(1) of the BMA Act was engaged and may prohibit disclosure of records or information about the affairs of the Fund that the BMA will have learned about while fulfilling its duties, but only if there was no applicable gateway to disclosure or exception to secrecy in section 31 of the BMA Act.

[3] Did the records fall within any exception or gateway to public disclosure contained in the statutory provision?

43. Section 31 of the BMA Act sets out a number of gateway provisions that allow disclosure of information to certain named entities or for certain limited purposes.⁷ This is different from disclosure to the world at large under the PATI Act. The ICO, in its *Guidance*, using the BMA as an example, has put it this way:

*There are other gateway provisions in the BMA Act which allow the disclosure of records or information which otherwise would fall within the statutory prohibition in section 31(1) of the BMA Act. A disclosure to the Financial Intelligence Agency for the purpose of its functions in section 31(1AA)(ac) is one example. Because these gateway provisions relate to disclosure to specific parties and/or specific purposes, however, as opposed to disclosure to the world at large, they are not relevant for consideration under the PATI Act.*⁸

⁶ In this review it was not necessary to compel the inspection or submission of the withheld records to the ICO, however, this does not fetter the Information Commissioner compelling such in future reviews.

⁷ See: sections 31(1AA), (1AB), (1B) and (1BA) of the BMA Act.

⁸ See: [Guidance: Disclosure prohibited by other legislation exemption \(section 37\)](#), (ICO, January 2023), p. 9.

44. The Applicant asserted in their submissions that the records fell within the gateway/exception in section 31(1AA)(a) of the BMA Act, which states:

*(1AA) Subsection (1) does not preclude the disclosure of information—
(a) to the Minister in any case in which the disclosure is for the
purpose of enabling or assisting him to discharge his statutory
functions or is in the public interest;*

[...]

45. Section 31(1AA)(a) is undoubtedly a statutory exception to the secrecy provision at section 31(1), which permits authorised disclosure to the Minister for the specified purposes of discharging his function or if disclosure is in the public interest; the relevant Minister being the Minister of Finance.⁹
46. The Applicant is factually not the Minister of Finance. However, it is quite astute for the Applicant to identify this gateway/exception in their submissions in attempts to explain the many reasons they believed they should have access to the records. It may even, on its face, seem appropriate for the Applicant to make analogous policy and public interest reasons for disclosure which echo public interest factors that are, in other contexts, relevant to the PATI Act regime. However, in all practicality, the operation of section 31(1AA)(a) of the BMA Act, and in particular its reference to the public interest, must be considered distinctly and apart from the PATI Act's public interest test. The public interest test is not applicable because section 37 of the PATI Act is an absolute exemption, i.e. without a public interest test requirement.
47. With that clarity, it is not available to the Information Commissioner to consider, by operation of the BMA Act, public interest factors favouring disclosure to the Minister of Finance under section 31(1AA)(a) as a gateway to public disclosure to the world at large under the PATI Act. Rather, it must be the case that this gateway/exception only applies to authorised disclosures made by the BMA to the Minister for those prescribed purposes, including where there is a public interest.
48. Thus, this provision does not authorise the BMA to make public disclosures or to give public access (under the PATI Act) to records or information, even after disclosures to the Minister of Finance under section 31(1AA)(a) of the BMA Act are made. In considering the exercise or non-exercise of the BMA's discretionary power to disclose to the Minister, it would be

⁹ See: section 1 of the BMA Act.

for a court of supervisory jurisdiction to determine the lawfulness of the BMA's action or inaction in this respect.

49. In this respect, I am persuaded by the approach taken by the UK Upper Tribunal in an appeal against the UK Information Commissioner and the First-Tier Tribunal in the case of *Ofcom v Gerry Morrissey and the IC*.¹⁰ In that case the tribunal was tasked to consider whether the UK Information Commissioner (and by extension the First-Tier Tribunal) could rightly determine the reasonableness of Ofcom's decision to not disclose information about its equal opportunities requirements. Ofcom was relying on section 44 of the Freedom of Information Act 2000 (UK), which provides an exemption from disclosure where it is prohibited under any enactment. In that case, the operative gateway being applied by Ofcom was section 393 of the Communications Act 2003 (UK), which permits Ofcom to make disclosures for the purpose of facilitating the carrying out by Ofcom of any of its functions. Section 44 of the UK's Freedom of Information Act is analogous to Bermuda's section 37 in the PATI Act.
50. The Upper Tribunal explained the Information Commissioner's role when faced with having to make a determination on a public authority's exercise of a gateway provision, at paragraph 36:

*[...] the task of the Commissioner is to make a decision whether, in any specified respect, a request for information made by a complainant to a public authority has been dealt with in accordance with the requirements of Part I of FOIA. That may well require a view to be taken on the construction of a potentially relevant statutory bar on disclosure in other legislation. In the circumstances of the present case, it did not extend to asking the questions which might be asked on the subject of reasonableness by a court of supervisory jurisdiction examining a challenge to OFCOM's failure to exercise powers available to it under the 2003 Act.*¹¹

51. I find the UK Upper Tribunal's view on the restraint of the Information Commissioner to not look behind a public authority's exercise of discretionary disclosure gateways relevant to this review. I accept that the Information Commissioner's regulatory role is confined to issuing decisions on public authorities' actions taken under the PATI Act. It would not be appropriate for the Information Commissioner, for instance, to order the BMA to apply an applicable gateway, found in its governing legislation—as the Applicant has asserted. Similarly, it is not open for the Information Commissioner to make a finding that the BMA's

¹⁰ See: *Ofcom v Gerry Morrissey and the IC* [2011] UKUT 116 AAC.

¹¹ See: *Ofcom v Gerry Morrissey and the IC* [2011] UKUT 116 AAC.

decision not to apply the gateway was unreasonable. To make a public law determination about the reasonableness of the BMA to not disclose the records or information sought by the Applicant to the Minister of Finance, by exercising the gateway from section 31(1AA)(a) of the BMA Act, is a matter for the jurisdiction of the Supreme Court.

52. In these matters, the ICO's approach is clarified that where a public authority has discretion about applying a gateway to disclosure from other legislation (not being the PATI Act), the Information Commissioner will not question or examine the reasonableness of the authority's decision. If the authority has decided that information should not be disclosed under a gateway, the Information Commissioner will only verify that the authority has made that decision and not consider whether its decision was reasonable. In short, if there is a statutory prohibition on disclosure and an authority has decided that it is not disapplied by a discretionary gateway, then the Information Commissioner will usually accept that section 37 of the PATI Act applies.¹²
53. This approach is distinguishable, however, where a gateway provision disapplies a prohibition on disclosure because the information is already publicly available. Again, using the BMA Act as an example, according to the gateway provision in section 31(1AA)(c), the secrecy provision does not apply "if the information is or has been available to the public from other sources". Simply put, the BMA cannot rely on the exemption in section 37(1) of the PATI Act to refuse access to a requester, if the record or information being requested is or has been available to the public from other sources.¹³
54. Section 31(1AA)(c) was not raised by either party to this review; there was no evidence that the records sought by the Applicant were already publicly available. As part of the investigation in this review, the ICO undertook efforts to locate public sources of the information, but no results were found.
55. The Applicant also raised the gateway provision in section 31(1AA)(aa), which states that the BMA is not precluded from disclosure of information "to the Registrar of Companies for the purpose of enabling or assisting him to discharge his statutory functions". For similar reasons already ventilated above, I find this provision did not apply to the question of whether the Applicant had a right of access, via the PATI Act, to any such records which may have been disclosed by the BMA to the Registrar of Companies.

¹² See: UK ICO Guidance, '[Prohibitions on Disclosure \(section 44\)](#)' where the UK ICO applied the Upper Tribunal case *Ofcom v Gerry Morrissey and the IC* [2011] UKUT 116 AAC.

¹³ See: [Guidance: Disclosure prohibited by other legislation exemption \(section 37\)](#), (ICO, January 2023), p. 9.

56. As an aside, there is an alternative pathway available to the Applicant to inspect records related to the Fund at the Registrar of Companies. The BMA first, at initial decision, signposted the Applicant to the records which may be available at the Registrar of Companies. As the ICO understands it, the BMA's records related to the Fund have been passed to the Official Receiver, as the Fund is in liquidation. Records at the Registrar of Companies are ordinarily available for inspection by shareholders, such as the Applicant, at the Registrar of Companies' office. The ICO understands that the Applicant had availed themselves of that resource. The ICO cannot speak definitively about that process nor verify the array or contents of any records held by the Registrar of Companies, as this was outside the scope of this review.
57. In closing, it is in many respects commendable, that the Applicant has exercised their right to make a public access to information request to the BMA for public records in the circumstances where they find themselves having suffered financial loss as a result of the poor performance of the Fund which they invested in, with the belief that it was a worthwhile investment. Their bold attempts to gain insights into how, when and why the Fund failed by wanting access to records and information held by the regulator is not irrational nor altogether misguided. Sympathies to the Applicant's circumstances aside, this Decision reflects the due application of the PATI Act.

Conclusions

58. Based on the above analysis, I find that the BMA was justified in applying section 37 of the PATI Act to refuse access to the 13 responsive records on the basis that disclosure was prohibited by the operation of the secrecy provision found in section 31(1) of the BMA Act.
59. Further, I find that even though there are statutory gateways available to the BMA which may allow statutorily permissible disclosures by the BMA to specific entities and/or for specific purposes, (a) the Applicant was not a person specified in any of the gateways considered, (b) the BMA's exercise of the gateways was discretionary to the BMA, and (c) the oversight of the exercise or non-exercise of that discretion, including its reasonableness, is outside the limited jurisdiction of the Information Commissioner under the PATI Act.

Decision

In this Decision, the Information Commissioner affirms the Bermuda Monetary Authority's internal review decision applying section 37 of the PATI Act to refuse access to the 13 responsive records on the basis that disclosure was prohibited by the operation of the secrecy provision found in section 31(1) of the Bermuda Monetary Authority Act 1969.

Judicial review

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



Decided by Jason Outerbridge, Information Commissioner, 5 September 2025

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Disclosure prohibited by other legislation

- 37 (1) Subject to subsection (6), a record is exempt if its disclosure is prohibited by any statutory provision, other than this Act.

[...]

Bermuda Monetary Authority Act 1969

Secrecy

- 31 (1) Except in so far as may be necessary for the due performance of his functions under the Act or other statutory provision, and subject to subsections (1AA), (1B), (1C) and (1D) any person who is, or is acting as, an officer, a servant, an agent or an adviser of the Authority shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Government or the Authority or of any person that may come to his knowledge in the course of his duties.

(1A) Any such officer or servant who communicates any such matter to any person other than the Minister, the Board or an officer of the Authority authorized in that behalf by the Chairman or suffers or permits any unauthorized person to have access to any books, papers or other records relating to the Government or the Authority, or to any person, commits an offence.

Punishment on summary conviction: a fine of \$50,000 or imprisonment for two years or both.

Punishment on conviction on indictment: a fine of \$100,000 or imprisonment for five years or both.

(1AA) Subsection (1) does not preclude the disclosure of information—

(a) to the Minister in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his statutory functions or is in the public interest;

(aa) to the Registrar of Companies for the purpose of enabling or assisting him to discharge his statutory functions;

[...]

(c) if the information is or has been available to the public from other sources;

[...]

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