

10 August 2022

To: All Media

**FOR IMMEDIATE RELEASE**

**Information Commissioner Issues Decisions 18/2022 and 19/2022**

Hamilton, Bermuda. On 3 August, the Information Commissioner issued [Decision 18/2022](#), Ministry of Health, and [Decision 19/2022](#), Department of Communications.

In [Decision 18/2022](#), the Information Commissioner considered an internal review decision by the Ministry of Health Headquarters (Ministry Headquarters) for a public access to information (PATI) request for records relating to the 2017 agreement between the Government and both the Brown-Darrell Clinic and Bermuda Healthcare Services. In the agreement, the Government supplemented the fees for MRI and CT services after legislation reduced the fees paid for diagnostic imaging services. The Ministry Headquarters' internal review decision (1) granted access to an extensive number of records, (2) refused access to others based on exemptions in the PATI Act, and (3) concluded that the remaining records fell outside the scope of the PATI Act by virtue of section 4 because they were created or obtained by the Attorney General's Chambers while carrying out its functions.

The Information Commissioner is currently reviewing the Ministry Headquarters' conclusion that some of the records fall outside the scope of the PATI Act. This review is still pending based on the outcome of the appeal in Information Commissioner v Attorney General, Civ. Appeal No. 7 of 2022 in the Court of Appeal. As a result, [Decision 18/2022](#) only considers the Ministry Headquarters' denial of access for approximately half of the 189 records involved, specifically the ones that were refused based on exemptions in the PATI Act.

In [Decision 18/2022](#), the Information Commissioner reviewed the Ministry Headquarters' reliance on eight different exemptions in the PATI Act, including for personal information, commercial information, Cabinet documents, ministerial responsibility, operations of public authorities, and disclosures prohibited by other legislation. The Information Commissioner has upheld in part, varied in part and reversed in part the Ministry Headquarters' internal review decision. The Commissioner has found that the Ministry Headquarters was justified in relying on some of these exemptions to deny public access to certain records, although the public interest still required disclosure of some of these records. The Information Commissioner has also found the exemptions do not apply at all to some of the responsive records. Finally, the Commissioner has found that a small number of records fall outside the scope of the PATI Act because they were obtained or created by the Attorney General's Chambers while carrying out its functions. In [Decision 18/2022](#),

the Information Commissioner has ordered the Ministry Headquarters to disclose 35 of the records, in whole or in part as required, by 14 September 2022.

On 3 August, the Information Commissioner also issued [Decision 19/2022](#), [Department of Communications](#). The Applicant had submitted a PATI request to the Department seeking records of its communications with the Premier from a certain time period. The Information Commissioner has found that the Department did not issue an internal review decision to the Applicant within the 6-week timeline set out in the PATI Act. However, during the Information Commissioner's independent review, the Department issued an internal review decision for the PATI request. As a result, the Information Commissioner does not require the Department to take any further action with respect to [Decision 19/2022](#).

[Decision 19/2022](#) is one of several recent cases where the public authority has raised questions about what is required during an internal review. Here, the head of the authority, the Permanent Secretary with supervision over the Department, had determined that the initial decision incorrectly denied the request as too burdensome to process. The head of the authority then sent the PATI request back to the Department's Information Officer for a new initial response. During the Information Commissioner's review, the Department noted that the PATI Act designates permanent secretaries as the head of the authority for government departments. The Department expressed concern that, as a practical matter in situations where the records have not yet been retrieved, permanent secretaries do not have ready access to the department records and do not always have adequate resources to fully process a PATI request. The Department stated that under these circumstances, an Information Officer may be better placed to issue the new response to the PATI request.

The Information Commissioner reiterated that an internal review decision must give the requester an answer on whether access is granted to the records and explain the requester's right to an Information Commissioner's review, in addition to addressing and issues with how the request was handled. This safeguards the PATI requester's right to a response to their request, rather than facing further delay. The Information Commissioner also acknowledged that in the absence of any amendment to change the designated head of government departments, permanent secretaries may delegate tasks as they see fit, before they issue their internal review decision on whether access is granted.

[Decisions 18/2022](#) and [19/2022](#) are available on [ico.bm](http://ico.bm).

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Editor's Notes:

The ICO is an independent public office responsible for promoting the use of and overseeing compliance with the Public Access to Information (PATI) Act 2010. The PATI Act gives the public a right to access records held by public authorities, subject to listed exemptions and administrative

grounds for denial of access. Individuals who are dissatisfied with the response of a public authority may seek a review by the Information Commissioner. The Information Commissioner shall investigate and the decisions by the Information Commissioner are legally binding.

Further information about the ICO is available at [ico.bm](http://ico.bm).