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To: All Media

FOR IMMEDIATE RELEASE

Information Commissioner Issues Decision 10/2021

Hamilton, Bermuda. On 30 September 2021, Information Commissioner Gitanjali Gutierrez issued [Decision 10/2021](#), in which she considered a refusal by the Department of Child and Family Services (DCFS) of a Public Access to Information (PATI) request.

The request asked for various records, including those on the number of times DCFS was legally represented by the Attorney-General's Chambers (AG's Chambers). It also sought records on the number of times DCFS opposed the appointment of a litigation guardian and lawyer for minors as well as the number of times DCFS applied for such appointments. Lastly, the PATI request asked for restraining orders made against DCFS staff for a specific time period and records on the administrative leave taken by DCFS's Director in 2017.

DCFS disclosed some information in its initial decision, but relied on section 16(1)(a) of the PATI Act to inform the Applicant that it did not collect statistics on legal representations by the AG's Chambers. It also stated that it did not hold any records showing the number of oppositions and applications concerning the appointments of a litigation guardian and lawyer for minors. DCFS also informed the Applicant that records relating to the Director's administrative leave were not 'held by' it and that the restraining orders were exempt under section 37(1), because disclosure of the restraining orders is prohibited by the Children Act 1998.

DCFS's internal review decision, which was subject to the Information Commissioner's review in Decision 10/2021, upheld the initial decision.

The Information Commissioner agreed with DCFS that public access to the one restraining order identified by DCFS as a responsive record to the PATI request should not be granted. But she came to that conclusion for a different reason than what DCFS originally communicated to the Applicant. The Information Commissioner found that the restraining order relates to the exercise of the Family Court's judicial functions and, as such, falls outside the scope of the PATI Act in accordance with section 4(1)(a). Because the PATI Act does not apply to the restraining order, the Information Commissioner did not consider DCFS's reliance on the exemption in section 37(1) to deny public access to such record.

The Information Commissioner concluded that DCFS's reliance on section 16(1)(a) to deny access to the records relating to the AG's Chambers' representations as well as any appointment of litigation guardians and lawyers was not justified. This was because DCFS did not take reasonable steps to locate the responsive records before concluding they did not exist.

[Decision 10/2021](#) can be accessed online at www.ico.bm, along with all prior decisions.

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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 www.ico.bm.