

8 September 2020

To: All Media

**FOR IMMEDIATE RELEASE**

**ICO publishes four Decision Notices**

Hamilton, Bermuda. Information Commissioner Gitanjali Gutierrez issued four Decision Notices last week.

Information Commissioner Gutierrez issued [Decision 10/2020](#), Bermuda Monetary Authority (BMA), on 28 August 2020, involving a PATI request for any contract or memorandum of understanding (MoU) between Shyft Network and the BMA. The BMA had refused the PATI request under section 37(1) of the PATI Act. During the Information Commissioner's independent review, however, the BMA clarified that it was relying on section 38 of the PATI Act to refuse to confirm or deny the existence or non-existence of its contract or MoU with Shyft Network. Section 38 of the PATI Act allows public authorities to refuse to inform the public of the existence or non-existence of a record, if the record itself is or would be exempt under the PATI Act, and if disclosure of its existence or non-existence is not in the public interest.

[Decision 10/2020](#) does not confirm whether the BMA holds any contract or MoU with Shyft Network. The Information Commissioner agreed with the BMA that, if the BMA had a contract or MoU with Shyft Network, such record would come to the BMA's knowledge in the course of its statutory duty as a financial regulator. As a result, the content of the contract or the MoU would be exempt under section 37(1) of the PATI Act, because its disclosure is prohibited under section 31(1) of the BMA Act.

The Information Commissioner further agreed that disclosure of the existence or non-existence of the BMA's contract or MoU with Shyft Network is not in the public interest. While acknowledging that the public has some interest in knowing if records related to a specific vendor exist or do not exist, the Information Commissioner is of the view that the public also "has an interest in a key financial regulator being able to perform its functions in a secure and effective manner." As a result, the Information Commissioner's Decision confirms that disclosure of the existence or non-existence of the specific contract or MoU is not required, as the BMA has already published sufficient details on how it operates.

On 31 August 2020, the Information Commissioner also issued a series of related Decisions involving the Department of Education (Department). The Decisions primarily involved the reasonableness of the searches conducted by the Department in response to three related PATI requests made by a

former public school teacher. The Applicant asked for various personal records, including those relating to an alleged assault by a student, as well as the student's records and the Department's policy on the reporting and handling of school incidents. In response, the Department had disclosed a number of responsive records and claimed that it did not hold any further records.

In [Decisions 11/2020](#), [12/2020](#) and [13/2020](#), the Information Commissioner confirmed that the Department either conducted a reasonable search when handling the PATI request or that the Department addressed any deficiencies in its searches during the Information Commissioner's independent review.

In [Decision 11/2020](#), the Information Commissioner found that the Department was correct to refuse the PATI request for the assault records and the former Commissioner of Education's response to the assault under section 16(1)(a) because these records do not exist. The Information Commissioner also upheld the Department's refusal of the PATI request for its policy on the reporting and handling of school incidents in [Decision 12/2020](#) on the same basis. In [Decision 13/2020](#), the Information Commissioner accepted the Department's documentation that showed that the email records being sought by the Applicant could no longer be found.

Although it was confirmed during the Information Commissioner's independent review that the Department does not have any written policy on the reporting and handling of school incidents, the public might find a summary of the Department's explanation of the general practice on this matter in [Decision 11/2020](#) helpful.

[Decisions 10/2020](#), [11/2020](#), [12/2020](#) and [13/2020](#) can be accessed online at [www.ico.bm](http://www.ico.bm).

###

Editor's Notes:

The ICO is providing services to the public and other stakeholders during regular business hours. The ICO can be reached by visiting our offices at Maxwell Roberts Building, 4<sup>th</sup> Floor, One Church Street, Hamilton, or by calling 543-3700 or emailing [info@ico.bm](mailto:info@ico.bm).

The Information Commissioner's Office 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 Information Commissioner's Office is available at [www.ico.bm](http://www.ico.bm).