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To: All Media

**FOR IMMEDIATE RELEASE**

**Information Commissioner's November Decisions**

Hamilton, Bermuda. Information Commissioner Gitanjali Gutierrez issued two decisions on 30 November 2020: [Decision 15/2020](#), Bermuda Police Service and [Decision 16/2020](#), Department of Public Lands and Buildings. The Information Commissioner also issued a substantive decision letter in November for an invalid application for an Information Commissioner's review.

In [Decision 15/2020](#), the Information Commissioner considered a decision of the Bermuda Police Service (BPS) on a request made under the Public Access to Information (PATI) Act 2010 for email correspondence between its senior management that relates to the Applicant. The Applicant, a police officer, was under a disciplinary investigation when the PATI request was made. The Information Commissioner upheld the BPS's decision to withhold some of the responsive records. She was satisfied that their disclosure could prejudice the effectiveness of the procedures used in BPS's disciplinary investigations, as set out in the Police (Conduct) Orders 2016, and therefore are exempt from public disclosure under section 30(1)(a) of the PATI Act.

The Information Commissioner found the Police (Conduct) Orders 2016 set out the BPS's disciplinary investigation procedures. These procedures outline what information must be provided and at what point during a disciplinary investigation. Under specific circumstances, the procedures also allow the BPS to withhold certain information from an officer under a disciplinary investigation. Disclosure of the responsive records under the PATI Act would therefore undermine the BPS's decision making authority under these procedures. Because the PATI request was made while the Applicant's disciplinary investigation was ongoing, disclosure would also undermine the timelines specifically set out in the Police (Conduct) Orders 2016.

The Information Commissioner acknowledged that there is a public interest in ensuring that police officers under disciplinary investigation undergo a fair process and are provided with relevant information and documents. This allows them to make meaningful representations and sufficiently defend themselves. But this public interest has been satisfied by the procedures in the Police (Conduct) Orders 2016, which include the right to appeal to the Public Service Commission and the availability of judicial review. Furthermore, the public has an interest in safeguarding the orderly administration of the BPS's disciplinary process, which was ongoing at the time the PATI request was filed in this case.

[Decision 16/2020](#), considered the failure of the Department of Public Lands and Buildings to issue an internal review decision within the statutory timeframes of the PATI Act. The Department explained the internal review decision was issued out of time because it was conducting extensive searches to locate the responsive record. The Department issued a decision during the Information Commissioner's review.

The Information Commissioner commended the Department for making efforts to locate the responsive record. [Decision 16/2020](#) reminds public authorities, however, that the timeframe to issue an internal review decision is not extendable. While there is nothing in the PATI Act which requires a public authority to stop searching for a record at a particular point, there is an obligation for public authorities to conduct an internal review and issue a decision within six weeks after the public authority's receipt for an internal review request.

[Decisions 15/2020](#) and [16/2020](#) can be accessed online at [www.ico.bm](http://www.ico.bm).

The Information Commissioner also issued a substantive decision letter for an invalid application for an independent review. The Applicant sought an independent review by the Information Commissioner of the Bermuda Bar Association's response to a request for records under the PATI Act. The Information Commissioner found the application invalid because the Bar Association is not a public authority under the PATI Act. Although it is established by a statute (the Bermuda Bar Act 1974), the Bar Association does not have a governmental or quasi-governmental nature which would qualify it as a public authority under paragraph 13 of the Schedule to the PATI Act. The Bar Association is neither owned, controlled by the Government, nor substantially funded by the Legislature and, as such, is not a public authority under paragraph 14 of the Schedule to the PATI Act.

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Editor's Notes:

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