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To: All Media

FOR IMMEDIATE RELEASE

Information Commissioner Issues Decision 08/2023

Hamilton, Bermuda. On 24 May 2023, Information Commissioner Gitanjali Gutierrez issued [Decision 08/2023, Ministry of Finance Headquarters](#) (Ministry Headquarters). The Applicant had submitted a Public Access to Information (PATI) request to the Ministry Headquarters in November 2021 for correspondence records related to the investment firm Gencom, its subsidiaries and specific individuals. This [Decision](#) relates to [Decision 07/2022](#), where the Information Commissioner had found that the Ministry Headquarters failed to provide a response to this PATI request and ordered it to do so.

In its subsequent internal review decision to the Applicant in April 2022, Ministry Headquarters denied access to the requested records under the exemption in section 25(1)(d) of the PATI Act. The Ministry Headquarters stated that disclosure would prejudice the Government of Bermuda's ongoing negotiations concerning the Fairmont Southampton Hotel. During the Information Commissioner's independent review, however, the Ministry Headquarters acknowledged that prior to denying access to the requested records, it had not conducted any search to attempt to locate records responsive to the PATI request. The Information Commissioner revised this review to consider only whether the Ministry Headquarters conducted a reasonable search, as the initial step in responding to this PATI request.

In [Decision 08/2023](#), the Commissioner finds that the Ministry Headquarters did not conduct a reasonable search for records responsive to the Applicant's PATI request. As a result, the Commissioner orders that Ministry Headquarters conduct a reasonable search for records responsive to the PATI request under the supervision of the Information Commissioner's Office and issue a new initial decision to the Applicant on or before Wednesday, 16 August 2023.

The Information Commissioner noted that the requester "has been seeking information on the topic through PATI requests since January 2021". The Information Commissioner has found that ". . . the Ministry's Headquarters' repeatedly failed to have met its obligations under the PATI Act for this PATI request has been detrimental to the Bermuda public's right to timely access to public records about the Minister of Finance's communications with Gencom and connected persons".

After acknowledging the challenges the Ministry Headquarters has faced as well as the significance of its role, the Information Commissioner has noted that "the difficulties within the Ministry

Headquarters are systemic and undermine the public's right to hold government accountable". The Information Commissioner has renewed her recommendation that "the Ministry Headquarters allocate appropriate resources and seek appropriate training and support to improve its administration of its PATI responsibilities. This, in turn, strengthens its capacity to uphold Bermudians and residents' rights to request access to records held by the Ministry Headquarters".

[Decision 08/2023](#) and the accompanying Order have been filed with the Supreme Court and are legally binding. All decisions issued by the Information Commissioner under section 47(6) of the PATI Act are available at ico.bm.

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Editor's Notes:

About the ICO

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 Bermuda's 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.

Orders and Enforcement

When the Information Commissioner issues decisions with accompanying orders, the decision is filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If a public authority fails to comply with her decisions and Orders, Information Commissioner Gutierrez will pursue enforcement to safeguard the rights of PATI requesters and the public. To date, public authorities either have complied or are working towards compliance with all the orders accompanying decisions issued by the Information Commissioner.

Further information about the ICO is available at ico.bm.