

## Decision Notice

---

### Decision 31/2023: Bermuda Gaming Commission

---

#### Prior PATI responses and disclosures

Reference no: 20220821-02

Decision date: 31 August 2023

## Summary

---

The Applicant submitted a request under the Public Access to Information (**PATI**) Act 2010 to the Bermuda Gaming Commission (**BGC**) asking for four sets of prior PATI responses and disclosures. The BGC denied the request, reasoning that it needed to keep any requester's identity confidential as required by section 12(4) of the PATI Act.

During this review, the BGC abandoned its reliance on section 12(4) and disclosed the requested records with some limited redactions of personal information as exempt under section 23(1) of the PATI Act. The Applicant continued to challenge the BGC's reliance on section 23(1).

The Information Commissioner has found that the BGC was justified in withholding the redacted personal information under section 23(1) and has varied the BGC's internal review decision accordingly.

## Relevant statutory provisions

---

Public Access to Information Act 2010: section 21 (public interest test); section 23 (personal information); section 24 (definition of personal information).

The Appendix provides the text of the statutory provisions and forms part of this Decision.

## Background

---

1. On 28 February 2022, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Gaming Commission (**BGC**) asking for a full copy of the responses and disclosures the BGC had released for four specific PATI requests. The BGC had referenced those prior PATI requests in a claim filed with the Supreme Court four years before in Bermuda Casino Gaming Commission v Richard Schuetz [2018] SC (Bda) 24 Civ.
2. In its Specially Endorsed Writ of Summons dated 28 February 2018 (**2018 Writ**), the BGC had described those requests as being made by the Royal Gazette and named the individual employee who had filed each request on 28 September 2017, 21 November 2017, 7 December 2017 and 31 January 2018 (**prior PATI requests**). In their request, the Applicant explained why they thought the identity of the requesters in the prior PATI requests was already in the public domain.

3. On 24 May 2022, the BGC issued an initial decision. It explained that the request was denied to protect the confidentiality of the requesters in the prior PATI requests because section 12(4)<sup>1</sup> of the PATI Act required it to do so.
4. On 17 June 2022, the Applicant asked for an internal review. They reiterated that they disagreed with the BGC's position because of what the Applicant viewed to be public confirmations of the identity of the requesters in the prior PATI requests through actions by the BGC and the Royal Gazette.
5. On 27 July 2022, the BGC affirmed its initial refusal on the same grounds.
6. On 21 August 2022, the Applicant made a timely application for an independent review by the Information Commissioner of the BGC's internal review decision.

## Investigation

---

7. The application to the Information Commissioner was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request for an internal review to a public authority. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
8. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the BGC to assess the BGC's ground for refusal.
9. On 6 October 2022, the Information Commissioner's Office (**ICO**) notified the BGC of the Applicant's valid application and asked for a copy of the withheld records, which were provided. The withheld records consisted of the following:
  - a. for the first PATI request dated 28 September 2017 seeking records about the company MM&I (**first request**): the initial decision, the list of responsive records, and the set of 21 records disclosed in whole;
  - b. for the second PATI request dated 21 November 2017 seeking records about betting shops (**second request**): the initial and internal review decisions that denied access to all responsive records;

---

<sup>1</sup> Section 12(4) states: "The identity of a requester shall be kept confidential and, except with the consent of the requester, may not be disclosed to any person other than a person who is required to deal with the request under this Act."

- c. for the third PATI request dated 7 December 2017 seeking meeting minutes (**third request**): the BGC's initial decision that administratively denied the request in full; and
  - d. for the fourth PATI request dated 31 January 2018 seeking records about the National Anti-Money Laundering Committee (**fourth request**): the BGC's initial and internal review decisions that denied access to all responsive records.
10. As required by section 47(4) of the PATI Act, the Information Commissioner afforded the public authority, the applicant and third parties a reasonable opportunity to make representations. The ICO received formal submissions from the BGC on 13 March 2023.
  11. The Information Commissioner invited the Royal Gazette and the individual employees involved in each of the prior PATI requests (**Third parties**) to make representations as concerned third parties. The joint submission from the Third parties agreed that the BGC's disclosure of all the requesters' names in the BGC's 2018 Writ meant that section 12(4) of the PATI Act was no longer applicable, although the joint submission made clear that no consent had been provided for that disclosure. The joint submission also gave written consent in this review for the BGC to disclose the Royal Gazette's identity as a PATI requester for the prior PATI requests, as well as the identity of the individual employee making the second, third and fourth requests. The individual employee making the first request expressly did not consent for their identity to be disclosed during this review.
  12. In light of the Third parties' submissions and written consent, the ICO Investigation Officer informed the BGC that, except for the individual employee's name for the first request, the requesters had consented to disclosure of their names. To help resolve this review, the ICO Investigation Officer then invited the BGC to abandon its reliance on section 12(4) and provide the requested records to the Applicant, except to withhold the individual employee's name for the first request under section 23(1) as exempt personal information. On 18 May 2023, the BGC agreed to this approach and confirmed its intention to disclose the requested records, with the personal information redacted.
  13. Given the BGC's intended disclosure, the ICO then provided an update to the Applicant on 19 May 2023 and invited the Applicant to consider withdrawing their application because the BGC had abandoned its reliance on section 12(4). As required by section 47(4) of the PATI Act, the ICO's letter also invited the Applicant to make any additional representations they wished if choosing not to withdraw.
  14. On 25 May 2023, the BGC disclosed the responsive records to the Applicant, only redacting personal information under section 23(1) that consisted of the name of the

individual employee for the first request and the BGC officers' signatures in the BGC's decision letters.<sup>2</sup>

15. On 2 and 8 June 2023, the Applicant made formal submissions, which also raised a number of concerns outside the scope of this review. In considering the Applicant's position, the ICO took into account the detailed reasoning the Applicant had provided in their internal review request to the BGC of 17 June 2022, their independent review request to the Information Commissioner of 21 August 2022, as well as relevant parts of their letter of 27 August 2021 to the Information Commissioner in a separate review.
16. On 2 August 2023, the ICO confirmed with the Applicant that this review would only consider the BGC's withholdings under section 23(1) and invited any final submissions. No further submissions were received.
17. As noted above, the BGC abandoned its reliance on section 12(4) during this review and has disclosed the requested records with limited redactions under section 23(1) for personal information. Accordingly, the Information Commissioner shall consider only the remaining issue: whether the BGC was justified in relying on section 23(1) to withhold as personal information the name of the individual employee for the first request and the signatures of some BGC officers.

## Information Commissioner's analysis and findings

---

18. In coming to this Decision, the Information Commissioner considered all the relevant submissions, or parts of submissions, from the BGC, the Applicant and the Third parties. She is satisfied that no matter of relevance has been overlooked.

---

<sup>2</sup> By follow-up, on 1 June 2023, as the ICO encouraged, the BGC emailed the Applicant the same set of records recently disclosed as a result of the Information Commissioner's Decisions and accompanying Orders related to the BGC's internal review decisions for the second and fourth requests, as well as the BGC's decision on a later request made by the Royal Gazette that was almost identical to the third request. The BGC's internal review decisions had refused to disclose those records. See the Information Commissioner's Decisions [31/2022](#) (second request), [33/2022](#) (related to third request), and [30/2022](#) (fourth request).

The Applicant wanted confirmation that the copies they received of the disclosures were "full, complete, and identical documents" given to the requesters. Although outside the scope of this review, the ICO has confirmed the accuracy of copies received by the Applicant. The Applicant also asked for a "full explanation" of why the Information Commissioner ordered disclosures in Decisions 30/2022, 31/2022 and 33/2022. That explanation is provided in the Decisions. The ICO also explained to the Applicant why these disclosures as a result of the Information Commissioner's Decisions were not within the scope of this review of the BGC's internal review decision of 27 July 2022.

### *Personal information – section 23*

19. Section 23(1) allows a public authority to deny public access to a record or part of a record if it consists of personal information. Section 24(1) defines personal information as information about an identifiable individual, subject to exclusions to this definition in section 24(2) that are not relevant in this review.
20. If the information in the record includes reference to a specific person, it is personal information. A record will also contain personal information if the individual's identity is reasonably ascertainable from the information.
21. The personal information exemption does not apply in certain circumstances set out in section 23(2). The exemption does not apply, for example, if the information relates to the requester or if the individual to whom the information relates has given their written consent for disclosure.
22. The personal information exemption is subject to the public interest test in section 23(6). In the context of personal information, the public interest test requires a balancing of the public interests in favour of publicly knowing an individual's personal information, on the one hand, against the privacy rights of the individual and any other public interest in favour of confidentiality, on the other.
23. When considering the public interest test for a personal information disclosure, public authorities should take into account the following factors<sup>3</sup>:
  - a. whether disclosure will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations;
  - b. whether disclosure would be fair to the individual under all of the circumstances, which would include consideration of whether sensitive personal information<sup>4</sup> was involved, the potential consequences of disclosure on the individual, and the individual's reasonable expectations of privacy; and
  - c. whether disclosure of the personal information is necessary to further the public interests that have been identified.

---

<sup>3</sup> See [Decision 02/2019](#), [Office of the Governor](#), at para. 51.

<sup>4</sup> Under section 7(1) of the [Personal Information Protection Act 2016](#), 'sensitive personal information' means "any personal information relating to an individual's place of origin, race, colour, national or ethnic origin, sex, sexual orientation, sexual life, marital status, physical or mental disability, physical or mental health, family status, religious beliefs, political opinions, trade union membership, biometric information or genetic information".

24. The Information Commissioner will consider whether the public interest concerns, if any, can be met by disclosure of other information in the records that interferes less with an individual's right to privacy. If so, the public interest concerns in favour of disclosure may be given less weight in the balance than the individual's privacy rights and freedoms.
25. In sum, to appropriately rely on the personal information exemption in section 23(1), the public authority must consider<sup>5</sup>:
- [1] Whether the record consists of information about an identifiable individual?
  - [2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?
  - [3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?
  - [4] If the exemption on personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure?<sup>6</sup>
26. A public authority invoking section 23(1) has the burden to show that, on the balance of probabilities, the exemption is justified. This is also the only exemption the Information Commissioner will invoke on her own accord, to safeguard the right to privacy.<sup>7</sup>

*Public authority's submission*

27. To justify the continued withholding of the individual employee's name for the first request, the BGC explained that, to its knowledge, the employee's name was not public. The BGC had not seen any article in the Royal Gazette that publicly disclosed the name of the individual employee for the first request, even if the name of the author of related news articles was published.
28. The BGC further submitted that it had identified the requesters in the prior PATI requests in its 2018 Writ and other court filings in BGC v Schuetz for the limited purposes of supporting the BGC's criminal complaint and court proceedings about illegal activity. The BGC did not consider this to be a disclosure to the public. The BGC also understood the

---

<sup>5</sup> See [Decision 02/2019](#), Office of the Governor, at para. 56.

<sup>6</sup> Disclosure of records consisting of personal information should also be made if disclosure would benefit the individual, in accordance with section 23(6) of the PATI Act, which is irrelevant in this case.

<sup>7</sup> See [Decision 01/2018](#), Bermuda Tourism Authority, at para. 27.

nature of the file held at the Supreme Court to be that the public did not have access to the BGC's 2018 Writ.

29. The BGC also redacted the signatures of its officers on the initial and internal review decision letters as exempt personal information.

*Applicant's submission*

30. The Applicant viewed the name of the employee making each request to be public information, referring to the BGC's court filing in BGC v Schuetz and the Royal Gazette's publications, including:
  - a. the 2018 Writ at paragraphs 56-60, and the First Affidavit of the BGC's then-General Counsel at paragraphs 71-74; and
  - b. three Royal Gazette articles: [Gambling with our future](#), 18 October 2017; [Casino: Timeline of events](#), 18 October 2017; and [Gaming chief hits back at MM&I](#), 20 October 2017.
31. The Applicant submitted that, as a result of the Royal Gazette's publications, the employee in each request had also wilfully provided in the public domain their full consent to disclosing their identity as the requesters. On this basis, the Applicant maintained that it was not legally justified for this same information to still be withheld.
32. Throughout their submissions, the Applicant also raised concerns that the BGC's 2018 Writ detailed the manner in which individuals had colluded to first obtain confidential materials from the BGC offices unlawfully. According to the Applicant, these individuals then had systematically made PATI requests with the intention to deceive the Information Commissioner, among others, by creating the appearance for the public that the documents already in their possession illegally were lawfully obtained through the PATI request process.
33. The Applicant did not comment on the redactions of the signatures of the BGC's officers.

*Third party's submission*

34. The Royal Gazette and each employee making the request consented to be named as the requester for the second, third and fourth requests. For the first request, the Royal Gazette consented to being identified, but the individual employee expressly objected to their name being disclosed in the BGC's initial decision letter.



35. The individual employee confirmed that they did not believe the Royal Gazette had ever published the BGC's decision letter for the first request, as the newspaper had done for the two of the other prior PATI requests at issue in this review.

*Discussion*

36. The Information Commissioner considers the applicability of the exemption in section 23(1) only for the remaining withheld parts of the records.

[1] Does the record consist of information about an identifiable individual?

37. The remaining withheld information in the records consisted of the following identifying information: the name of the Royal Gazette employee making the first request; the signatures of the BGC's then-Information Officers; and the signature of the BGC's Chairperson.

[2] Does the information fall within any exclusion in section 24(2) to the definition of personal information?

38. In considering section 24(2)(a) for the BGC officers' signature, this routine personal work information was attached to them as individual people and not generally to their "position or function". Section 24(2)(a) was inapplicable. No other exclusion was relevant.

[3] Do any exceptions in section 23(2) apply to the record?

39. None of the exceptions in section 23(2) were applicable. The individual employee objected to disclosure of their name, and no consent was provided by the BGC officers to their signature being disclosed.

[4] If the exemption is engaged, does the balance of the public interest require its disclosure?

BGC officers' signatures

40. The Information Commissioner has considered whether the balance of the public interest required the disclosure of the signature of public authorities' officers in [Decision 32/2022, Bermuda Gaming Commission](#). In paragraph 126 of that Decision, the Information Commissioner found that such disclosure did not further any public interest. Moreover, disclosure would have been an unnecessary invasion of public officers' privacy, including to create a vulnerability for the risk of fraud. The same reasoning applied here. The balance of the public interest did not require disclosure of the BGC officers' signatures.

### Third party's employee's name

41. This Decision considers whether a public interest will be furthered by a disclosure pursuant to the PATI Act of the individual employee's name for the first request, over the individual's objections. The Applicant raised numerous concerns about the prior conduct of the BGC, the Royal Gazette and its employees towards the Applicant and what they described as their confidential information. These were private interests, however, and the Information Commissioner has found it difficult to identify a public interest that would be furthered by the disclosure of the individual employee's name. This is particularly true when the Applicant's private grievances or efforts to seek redress can be advanced based on the existing disclosure.
42. The purposes set forth in section 2 of the PATI Act address strengthening the transparency and accountability of public authorities. These purposes do not focus on efforts to hold private individuals accountable for alleged private wrongs. Here, the disclosure of the employee's name does not further the transparency or accountability of the BGC or any other public authority.
43. The weightier interest lies with the benefit to the public of upholding the policy protecting a PATI requester's confidentiality. The policy underlying the PATI Act seeks to ensure that individuals who make PATI requests do not risk negative consequences or retaliation in Bermuda's small jurisdiction.
44. Consequently, disclosure of this personal information would not further a public interest.
45. For the sake of argument, even if disclosure would further a public interest, it would not be fair to the individual or necessary to further a public interest. As described above, paragraph 30, the Applicant referred to the Royal Gazette's articles. No individual author was indicated for these articles, and none of them identified the Royal Gazette as the requester for any of the prior PATI requests. Other articles did identify the Royal Gazette and the individual employee for the second and fourth requests, as well as for a later request made by the Royal Gazette as a follow-up to the third request. The Royal Gazette's articles, including those at paragraph 30, also did not identify the individual employee making the first request. It is certainly fair to consider disclosing the name of a journalist who has already self-identified as having made a specific PATI request, but the circumstances are different when no such self-identification has occurred.
46. The Applicant also placed great weight on the BGC's identification of the PATI requesters in its 2018 Writ and First Affidavit of the BGC's then-General Counsel. The Applicant was correct that individuals may obtain a copy of the 2018 Writ from the Supreme Court Registry through a process described in the Registrar for the Court of Bermuda's [draft](#)

[2016 circular](#), which is separate from the process under the PATI Act and requires payment of a fee.<sup>8</sup> For purposes of the analysis here, however, it is important that none of the requesters gave their consent to the BGC to include their identity in its court filings. Further, unlike for the others, the individual employee for the first request had subsequently not consented to disclosure of their identity nor had they taken steps as an individual to make their name public. It would be unfair under these circumstances to use others' disclosure of an individual's identity, without their consent, to conclude that it would be fair now to disclose their name publicly through a response to a PATI request.

47. Finally, if any public interest were to exist, the disclosure of the individual employee's name is unnecessary. During this review, the Royal Gazette consented to the disclosure of its identity for the first request, and the disclosures were made to the Applicant. Nothing in the public interest would be gained by the disclosure of an individual employee's name.
48. In conclusion, no public interest would be furthered by the disclosure of the individual employee's name; and even if a public interest was identified, it would be both unfair and unnecessary to disclose the individual's name. The balance of the public interest favours maintaining the exemption for the individual employee's name for the first request.

### ***Conclusion***

49. The Information Commissioner is satisfied that the BGC was justified in relying on section 23(1) of the PATI Act to refuse to disclose exempt personal information.
50. The Information Commissioner notes a number of concerns raised by the Applicant that were outside the scope of this review and, in some instances, beyond the remit of the Information Commissioner or the PATI Act. As described in footnote 2 above, these concerns focused primarily on the BGC's handling of the four prior PATI requests and the related Information Commissioner's Decisions. These concerns ranged from questioning why the BGC's meeting minutes<sup>9</sup> did not include certain topics to seeking accountability for 'confidential' information 'stolen' from the BGC.

---

<sup>8</sup> The ICO confirmed with the Registrar for the Court of Bermuda that the 2018 Writ has always been available through the Supreme Court's process. The Information Commissioner expresses appreciation to the Registrar for assistance with this confirmation. The BGC's understanding of the status of the 2018 Writ, as noted in paragraph 28, was mistaken.

<sup>9</sup> As a reminder, the BGC disclosed certain of its meeting minutes with redactions pursuant to the Information Commissioner's [Decision 33/2022](#) and accompanying Order.

51. With respect to some of these issues, this was not the first time an applicant has sought broader redress from the Information Commissioner than is possible within this Office's remit. As Chief Justice Hargun explained in [Furbert v Department of Human Resources and Information Commissioner](#) [2019] SC (Bda) 19 Civ, at paragraphs 17-18:

17. First, the jurisdiction of the IC under the PATI Act is to review the decision made by the head of a public authority and if appropriate to order the production of documents which come within the scope of the PATI Act. It is a limited jurisdiction and does not extend to the IC making judgments in relation to whether the contents of the document are accurate. It is beyond the jurisdiction of the IC under the PATI Act to make a determination whether the documents ordered to be produced "*were falsely generated*" or to make a determination whether the documents produced are "*consistent with an employer engaging in an attempt constructive dismissal*". There is no scope within the PATI Act for the IC to make such determinations.

18. Indeed the statutory limitations on the competence of the IC are explained in the IC's Decision at paragraphs 104 – 105:

*"104. The mandate and jurisdiction of the Information Commissioner is established in the PATI Act. It focuses on enforcing the right to access public records. The questioning of the content of those records is not within the Information Commissioner's authority, nor is it appropriate for a neutral oversight body to speak to the content of the public records.*

*105. Instead, the Information Commissioner strives to safeguard the right to access public records, and to strengthen good governance and democratic engagement. Once public records are in the hands of the public, the assessment of and accountability for the content of those records rests in the hands of the individuals such as the Applicant and other members of the public".*

52. Although beyond the scope of this review, the Information Commissioner notes that records related to the Applicant have been properly disclosed under the PATI Act pursuant to the Information Commissioner's Decisions. It is beyond the scope of the PATI Act for the Information Commissioner to address the propriety of documents obtained through other means.

53. Other concerns raised by the Applicant related to how other public authorities should administer the PATI Act. The Applicant argued throughout this review that the BGC and other authorities had made disclosures in its initial responses or internal reviews for various PATI requests that released information relating to the Applicant's personal, commercial or confidential information without affording the Applicant notice as a third party in accordance with section 39 of the PATI Act. The BGC's handling of those PATI requests was not before the Information Commissioner in this review. As a general matter, though, third parties must be afforded notice and an opportunity to make representations when the requirements of section 39 of the PATI Act are met.<sup>10</sup>
54. Finally, in their PATI request on 28 February 2022, the Applicant sought copies of the 'decision packages' for four specific PATI requests. These decision packages consisted of the BGC's decision letters that identified the PATI requesters, as well as any records that had previously been disclosed to the public. Yet, the Applicant did not receive copies of the previously disclosed records until 25 May 2023.
55. When public records are released pursuant to the PATI Act (other than a requester's personal information), the records are released to the world-at-large. Here, the Applicant sought not only the disclosed records but the entire 'decision package' for earlier PATI requests. When public authorities encounter such new circumstances with PATI requests, the provisions of the PATI Act and the Minister's [PATI Practice Code](#) provide a framework that should be used when responding. The PATI Act includes the duty to assist a PATI requester in relation to their request (section 12(2)(a)), the option to disclose the identity of a requester with their consent, as eventually occurred here (section 12(4)), and the exemption in section 38(1) that allows a public authority to refuse to confirm whether records responsive to part of a request exist (section 38(1)). Taken together with the PATI Code of Practice, public authorities may approach a PATI request with the aim of assessing what records or part of records can be provided through the effective application of the PATI Act's provisions.

---

<sup>10</sup> Section 22 of the Minister's [Public Access to Information: Administrative Code of Practice for Public Authorities](#) (March 2023) explains this process in detail, and public authorities should adhere to it.

## Decision

---

The Information Commissioner finds that the Bermuda Gaming Commission (**BGC**) was justified in relying on section 23(1) of the Public Access to Information (**PATI**) Act 2010 to deny access to personal information in parts of some records responsive to the PATI request.

In accordance with section 48 of the PATI Act, the Information Commissioner:

- varies the BGC's internal review decision to grant access to the requested records in part and to deny access to personal information in parts of certain records, in accordance with section 23(1) of the PATI Act.

Because the BGC has disclosed the redacted records, the Information Commissioner does not require the BGC to take any further steps in relation to this Decision.

## Judicial Review

---

The Applicant, the Bermuda Gaming Commission, the Third parties and any other person aggrieved by this Decision have the right to apply to the Supreme Court for review of this Decision, in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.

Gitanjali S. Gutierrez  
Information Commissioner  
31 August 2023

## Appendix: Relevant statutory provisions

---

### Public Access to Information Act 2010

#### Public interest test

- 21 For the purposes of this Part, the test of whether disclosure by a public authority of a record or the existence of a record is in the public interest is whether the public interest would, on balance, be better served by disclosure than by non-disclosure.

#### Personal information

- 23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.
- (2) Subsection (1) does not apply if—
- ...
  - (b) the individual to whom the information relates consents in writing to its disclosure;
  - ...
- ...
- (6) A record that contains personal information relating to an individual shall be disclosed if disclosure of it is in the public interest or would benefit the individual.

#### Definition of personal information

- 24 (1) Subject to subsection (2), “personal information” means information recorded in any form about an identifiable individual, including—
- ...
  - (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
  - ...
- (2) But “personal information” does not include—
- (a) information about an individual . . . who is or was an officer or employee of a public authority that relates to the position or functions of the individual;
  - ...

**Information Commissioner for Bermuda  
Maxwell Roberts Building  
4<sup>th</sup> Floor  
One Church Street  
Hamilton, HM 11  
ico.bm  
441-543-3700**