

## Decision Notice

---

### Decision 11/2018: Bermuda Police Service

---

#### **Bermuda Police Association meeting minutes**

**Reference no: 11032016**

**Decision date: 27 November 2018**

## Summary

---

The Applicant made a request under the Public Access to Information (PATI) Act 2010 to the Bermuda Police Service (Police Service) for meeting minutes of the Bermuda Police Association (Police Association) and for the Police (Conditions of Service) Order 2002 that incorporated the 'Combined Allowance' into police salaries. The Police Service's initial decision informed the Applicant that the Order was available online and provided the link to the web address. The Police Service also denied access to the meeting minutes of the Police Association because the Police Service did not hold the records, and the Police Association is a separate entity and is not a public authority under the PATI Act to which the Police Service could transfer the request under section 13(5) of the PATI Act. The Police Service's internal review decision confirmed its position that the Police Association is not a public authority under the PATI Act and affirmed the Police Service's initial response. The Applicant challenges whether the Police Association is a public authority under the Schedule to the PATI Act.

The Information Commissioner found that the Police Service failed to conduct a reasonable search for responsive records, in accordance with section 12(2) of the PATI Act. The Information Commissioner also found that the Police Service was justified in not transferring the request under section 13(5) of the PATI Act because the Bermuda Police Association is not a public authority under the Schedule to the PATI Act.

The Information Commissioner required the Police Service to conduct a reasonable search for responsive records and to issue a new initial decision.

## Relevant statutory provisions

---

Public Access to Information (**PATI**) Act 2010: section 3(1) (definitions); section 3(3) (held by); section 12(1) (access to records); section 12(2)(b) (complete and accurate response); section 13(5) (request for records); and Schedule (definition of public authority).

Public Access to Information Regulations (**PAIR**) 2014: regulation 5 (reasonable search requirement) and regulation 8 (transfer of requests).

## Background

---

1. On or about 8 December 2015, the Applicant made a Public Access to Information (**PATI**) request to the Bermuda Police Service (**Police Service**). The Applicant sought the meeting

minutes of the Bermuda Police Association (**Police Association**) from the Emergency General Meeting, which was held to address the Government of Bermuda's offer in relation to a new contract, and the minutes from the Police Association's meetings held during the year leading up to the Emergency General Meeting. The Applicant also sought the Police (Conditions of Service) Order 2002 that incorporated the 'combined allowance' into police salaries.

2. On 15 January 2016, the Police Service issued its initial decision. The Police Service informed the Applicant that the Police (Conditions of Service) Order 2002 was available online and provided the link to the web address. The Police Service also provided a copy of the 'Deed of Settlement' dated 30 March 2011, which was not responsive to the PATI request but related to the incorporation of the combined allowance into salaries.
3. The Police Service's initial decision did not provide access to the meeting minutes of the Police Association because it found that the Police Association was a separate entity from the Police Service and not a public authority under the Schedule to the PATI Act. The Police Service offered to voluntarily forward the request to the Police Association, with the Applicant's permission.
4. On 19 February 2016, the Applicant sought an internal review. The Applicant asserted that the Police Association is part of the Police Service and a public authority under the PATI Act. The Applicant referenced the establishment of the Police Association under the Police Act 1974.
5. On 3 March 2016, the Police Service issued an internal review decision confirming its prior conclusions that the Police Association is not a public authority under the PATI Act and that the Police Service does not have the authority to release records held by the Police Association.
6. The Applicant requested an independent review by the Information Commissioner on 11 March 2016.

## **Investigation**

---

7. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a PATI request to a public authority and asked the public authority for an internal review before asking her for an independent review. 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 appropriate for consideration because there appeared to be no dispute concerning the Applicant's access to the meeting minutes if the records could be located.
9. On 21 and 22 April 2016, the Information Commissioner's Office (**ICO**) notified the Police Service and the Police Association of the valid application, respectively.
10. With the agreement of the Applicant, the Police Service, and the Police Association, the ICO attempted to facilitate an early resolution between June 2016 and January 2017. The resolution process was unsuccessful.
11. On 13 April 2017, the ICO notified the Applicant that the Information Commissioner was progressing to a review and investigation under section 47 of the PATI Act.
12. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties to the review a reasonable opportunity to make representations. After confirming the revised issues with the Applicant, the ICO notified the Police Service on 19 March 2018 of the revised issues on review. The ICO also invited the Applicant and the Police Service to comment on this application and make submissions to the Information Commissioner for consideration in this review. The Police Service was asked specific questions related to the reasonableness of its search for records and its decision not to transfer the request to the Police Association because of its assertion that the Police Association was not a public authority under the PATI Act.
13. The Police Service made formal submissions on 2 April 2018. The Applicant also made submissions throughout the course of the review.
14. On 12 October 2018, the ICO invited the Police Association to provide information related to whether it is a public authority under the Schedule to the PATI Act. The ICO also requested specific documents related to the Police Association's governance structure and funding. On 5 November 2018, the Police Association provided the requested documents and additional submissions on its status under the PATI Act.

### **Information Commissioner's analysis and findings**

---

15. In coming to a decision on this matter, the Information Commissioner considered all of the relevant submissions, or parts of submissions, made by the Applicant, the Police Service, and the Police Association. She is satisfied that no matter of relevance has been overlooked.

16. Before considering the status of the Police Association under the Schedule to the PATI Act and whether the Police Service should have transferred the PATI request under section 13(5), the Information Commissioner must consider whether the Police Service conducted a reasonable search to determine if it held the records.

*Reasonable search – section 12*

17. The PATI Act grants Bermudians and residents a right to access records ‘held by’ a public authority, except those records exempt under the Act. (section 12(1)). When responding to a PATI request, public authorities must make every reasonable effort to provide a response to a PATI request that is complete and accurate. (section 12(2)(b)).

18. Regulation 5(1) further requires that the public authority, through its Information Officer and delegates, make a reasonable effort to locate a record that is responsive to the PATI request. Should the Information Officer not locate responsive records, Regulation 5(2) requires the Information Officer to document the efforts taken. This is often referred to as a ‘search log’.

19. Together, these provisions require the public authority to conduct a reasonable search for records held by the public authority, in support of the right to access public records set out in section 12(1).

*Held by – section 3(3)*

20. The search for responsive records determines if records are ‘held by’ the public authority for purposes of the PATI Act. See section 12(1).

21. Section 3(3) of the PATI Act clarifies that ‘held by’ is defined as ‘possession’, ‘custody of’, or ‘control’ over a record. Numerous access to information laws rely upon ‘custody’ and ‘control’ to define ‘held by’.

22. ‘Possession’ of a record is frequently a lesser part of the meaning given to custody.<sup>1</sup> A public body has custody of a record when the record is in the physical possession of the public body and the public authority has the authority to use, maintain, care for, dispose of or disseminate the record. Custody is possession plus additional authority over the record.

23. A record is under the control of a public body when the public body has the authority to manage the record, including restricting, regulating and administering its use, disclosure or

---

<sup>1</sup> See, e.g., *City of Ottawa v Ontario (Information and Privacy Commissioner)*, 2010 ONSC 6835 (2010), available at <https://www.ipc.on.ca/wp-content/uploads/2018/01/mo2408-divct.pdf>; Ministry of the Attorney General, Order PO-2739 (Information and Privacy Commissioner of Ontario) (2008), available at <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/133182/index.do>;

disposition. It can include instances when a public authority does not have physical possession of a record but retains control over it.

24. The PATI Act also includes 'possession' as a stand-alone category to define that a record is 'held by' a public authority. The plain meaning of possession means the "state of having, owning, or controlling something". Oxford Dictionary of English (3<sup>rd</sup> ed. 2010). This results in a record being held by a public authority when the record is in the physical possession of the authority. This broad definition of 'held by' is consistent with the intent in section 2(a) of the PATI Act to afford the public access to information to the greatest extent possible within the Act's provisions.
25. More generally, a broad reading of the records held by a public authority is consistent with the good governance and democratic purposes furthered by the PATI Act, as set forth in the remainder of section 2:
  - b. increase transparency, and eliminate unnecessary secrecy, with regard to information held by public authorities;
  - c. increase the accountability of public authorities;
  - d. inform the public about the activities of public authorities, including the manner in which they make decisions; and
  - e. have more information placed in the public domain as a matter of routine.
26. When considering whether a record is in a public authority's possession within the meaning of the PATI Act, the Information Commissioner will have regard to these aims of the Act to enhance accountability, public participation in democracy, and fairness in decision making.
27. In rare circumstances, applying the plain meaning of possession above might lead to a number of situations where documents are brought within the reach of the PATI Act that were never intended to be, despite the Act's broad purposes.
28. The High Court of Ireland recently illustrated such an example when considering whether 'lawful physical possession' alone was sufficient for a record to be held by a public authority:

One such example was a scenario where a person accidentally leaves a document in the possession of a public body, say by leaving it at the reception desk. It was submitted that while the public body may have physical possession of the document and this possession is lawful, the

public body has no interest in the document and it couldn't possibly be said to be held by them for the purposes of the Act.<sup>2</sup>

29. To avoid what would be unintended or absurd consequences, the Information Commissioner finds it appropriate to consider the following non-exhaustive list of questions:<sup>3</sup>

- b. Was the record created by an officer, employee or member of the public authority?
- c. What was the creator's intended use of the record?
- d. Does the public authority have physical possession of the records either because the creator has provided it either voluntarily or pursuant to a statutory or employment requirement?
- e. Does the public authority have a right to possess the record?
- f. Does the content of the record relate to the public authority's mandate, functions, or operations?
- g. To what extent has the institution relied upon or used the record?
- h. How closely has the record been integrated with the other records held by the institution?

30. Application of these questions, taking into account the purposes of the PATI Act above, will assist in determining whether a public authority has possession of a record within the meaning of section 3(3) of the Act.

31. With this definition of 'held by' in mind, the public authority must then conduct a reasonable search.

*Reasonable Search – section 12(2)(b) and regulation 5*

32. To determine what records it holds, a public authority must conduct a reasonable search under the circumstances, consistent with section 12(2)(b) and regulation 5. As set out in Decision 02/2018 Department of Human Resources, paragraphs 50-51, the Information Commissioner shall consider:

---

<sup>2</sup> The Minister for Health -v- The Information Commissioner & Ors [2014] IEHC 231, at para. 40 (2014) (Ireland), available at <http://www.bailii.org/ie/cases/IEHC/2014/H231.html>.

<sup>3</sup> These questions are adapted from those used in a number of Canadian jurisdictions when determining whether a public authority has custody or control of a record. The questions above are modified to focus only upon the question of possession.

- the quality of the public authority’s analysis of the request;
- the scope of the search that it decided to make on the basis of that analysis; and
- the rigour and efficiency with which the search was then conducted.

The specific circumstances of each case will inform this assessment and may include, when appropriate, evidence related to discussions with a requester to clarify a request, the public authority’s records management practices, the details of any search plan, or any reason offered by the public authority to justify the reasonableness of its search.

33. A public authority bears the burden of demonstrating that, on the balance of probabilities, it has conducted a reasonable search for records held by that public authority before it determines that the request must be transferred.

*Public authority’s submissions*

34. The Police Service submitted that it decided that no search for records was necessary because the records requested are those of the Police Association, which is a separate entity from the Police Service. In response to the Applicant’s argument that the Police Association was part of the Police Service, the Police Service highlighted that the Police Association is not a Government of Bermuda entity and that some individuals within the Police Service could not be members of the Police Association, such as the Commissioner of Police.

35. The Police Service further explained that because the Police Association is not part of the Police Service, the Commissioner of Police cannot compel the Police Association to provide its records to the Police Commissioner.

36. In response to investigation questions, the Police Service acknowledged that there may be occasions when a record made by the Police Association would become a record held by the Police Service. This could occur, for example, if the Police Association copied the Police Commissioner on a letter to its members. The Police Service accepted that such records would be subject to the PATI Act as records held by the Police Service.

37. The Police Service also relied upon the UK Association of Chief of Police Officers’ [Manual of Guidance on the UK Freedom of Information Act 2000](#) (prepared following consultation with the UK Information Commissioner)<sup>4</sup>. Based on the reasoning in the Manual, the Police Service acknowledged that if the Police Association’s information or records are held on its

---

<sup>4</sup> Available at <https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/policies/acpo-manual-of-guidance---freedom-of-information-act-2000>.

servers and the Police Service used or accessed the information to exercise its functions, then those records are deemed to be held by the Police Service. If, however, the Police Service does not use or access any of the Police Association's information that might be held on its servers, then the Police Service is not deemed to 'hold' the records for the purposes of the PATI Act.

38. Finally, the Police Service confirmed during the ICO's investigation that no individuals attended the relevant Police Association meetings in an official capacity as a representative of the Police Service.

39. The Police Service submitted that it does not hold and has not ever held the Police Association's meeting minutes.

#### *Applicant's submissions*

40. The Applicant submitted that the Police Association is not a separate entity, but part of the Police Service. The Applicant contends that the Police Association is, therefore, a public authority under the PATI Act. The Applicant relied on the Police Act 1974, particularly section 28 which states that "[t]here shall continue to be established, in the manner prescribed, the body known as the Bermuda Police Association".

41. In the Applicant's request for an internal review, the Applicant also emphasised the importance of the records concerning the combined allowance agreement because it led to the loss of additional pension income for officers who had retired between the time that the negotiations started and the agreement date in 2010. The Applicant also stated that the Police Association had denied prior requests to view the requested meeting minutes.

#### *Discussion*

42. As an initial matter, the Information Commissioner addresses whether the Police Service conducted a reasonable search before determining that it did not hold the requested records.

#### [1] The quality and nature of the public authority's initial analysis of the request

43. The Police Service's submissions clearly indicate it correctly understood that the PATI request sought the meeting minutes from the Police Association's Emergency General Meeting and its meetings during the year leading up to the Emergency General Meeting.

44. The Information Commissioner is satisfied that the Police Service's understanding of the request was accurate, complete, and adequate.

[2] The scope of the public authority's search that it decided to make based on its analysis

45. The Police Service accepts that it did not conduct a search for the meeting minutes because, in its view, the Police Association is a separate entity and the Police Commissioner could not exercise control over the Police Association's records.
46. While processing the request, the focus of the Police Service and Applicant was on the relationship between the Police Service and Police Association. The Applicant asserted that the Police Association was a part of the Police Service, as established under the Police Act 1974, and the Police Service disputed this.
47. What the Police Service did not consider—regardless of its relationship with the Police Association—is whether it holds the requested records within the meaning of section 3(3) of the PATI Act.
48. In justifying its decision not to search, the Police Service relied upon the UK Manual, which refers to section 3(2) of the UK Freedom of Information Act. That UK provision states only that “information is held by a public authority if—(a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority”. The UK law does not expressly refer to ‘possession’, unlike section 3(3) of the PATI Act. Importantly, under the PATI Act, a public authority may hold records that are in its possession within the meaning of section 3(3), regardless of whether it uses or accesses those records.
49. The Police Service did not take steps to identify and clarify whether or not the meeting minutes are in its possession within the meaning of section 3(3).
50. The Information Commissioner is not satisfied that the scope of the search was adequate.

[3] The rigour and efficiency with which the public authority conducted its search

51. As discussed above, the Police Service did not engage in any search for the meeting minutes when processing the PATI request.
52. The Information Commissioner is not satisfied that the rigor and efficiency of the Police Service's search for the meeting minutes was adequate when it was processing the request.
53. In light of section 3(3) of the PATI Act, and based upon the scope of the search and the rigor and efficiency with which the search was conducted, the Information Commissioner is not satisfied, on the balance of probabilities, that the Police Service conducted a reasonable search for the meeting minutes.

54. In the absence of a reasonable search, the Police Service did not offer sufficient justification to conclude that, on a balance of probabilities, it did not hold the requested records.

*Duty to transfer request to another public authority – section 13(5)*

55. Section 13(5) of the PATI Act and regulation 8 of the PATI Regulations require a public authority to transfer a PATI request to another public authority when it has established that it does not hold the records sought and it knows that the records are held by another public authority. This is because the PATI Act grants a right to access records ‘held by’ a public authority, except for exempt records (section 12(1)).

56. This means that before making a transfer, a public authority must (a) determine that the record is not ‘held by’ that public authority and (b) know that another public authority holds the record.

*‘Public authority’ – section 3(1) and Schedule to the Act*

57. If the public authority does not hold the records sought, it must consider whether it knows that another public authority has them. A ‘public authority’ is defined in section 3(1) of the PATI Act as ‘an entity listed in column 1 of the Schedule’ to the Act. Column 1 of the Schedule to the Act provides an exhaustive list of named bodies, as well as three categories of entities:

- b. Every entity that is established by statutory provisions and carries out functions of a governmental or quasi-governmental nature (paragraph 13);
- c. Every entity that is owned or controlled by the Government (paragraph 14); and
- d. Every entity that is substantially funded by monies authorised by the Legislature (paragraph 14).

*Governmental or quasi-governmental functions – paragraph 13 of the Schedule*

58. If an entity established by statute carries out governmental or quasi-governmental functions, it is a public authority under the PATI Act. The PATI Act does not define governmental or quasi-governmental functions.

59. Although not binding in Bermuda, the Information Commissioner finds highly persuasive the UK House of Lords’ consideration of the meaning of ‘governmental function’ in the context of section 6(3)(b) of the UK Human Rights Act 1998. Lord Nichols states that “[b]ehind the instinctive classification of these organisations as bodies whose nature is governmental lie factors such as the possession of special powers, democratic

accountability, public funding in whole or in part, an obligation to act only in the public interest, and a statutory constitution”.<sup>5</sup>

60. Halsbury’s Law of England (Volume 61A (2018)) also states that “[t]here is no test of universal application to determine whether functions are public. Factors to be taken into account include the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory powers, or is taking the place of central government or local authorities, or is providing a public service. The fact that the function is regulated by statute is unlikely to be sufficient to render it a public function”.

61. In sum, when determining whether an entity has a governmental or quasi-governmental function within the meaning of paragraph 13 of the Schedule to the Act, the Information Commissioner will consider whether the entity:

- has special authority or powers granted to it, i.e. powers of the kind that ordinary private bodies do not enjoy, and which will normally be derived from statutory provisions,
- is democratically accountable to the public,
- receives public funding in whole or in part,
- has an obligation to act only in the public interest, and
- is created by statute.

*Owned or controlled by the Government – paragraph 14 of the Schedule*

62. Paragraph 14 in column 1 of the Schedule states that a public authority includes “every entity that is owned or controlled by the Government.” Although the PATI Act does not define the language ‘controlled by the Government’, the Audit Act 1990 provides further explanation with respect to public bodies whose accounts are subject to audit by the Office of the Auditor General.

63. Section 2 of the Audit Act sets forth the relevant definitions. Section 2(2) defines the words ‘Government-controlled’ as follows:

*An entity is Government-controlled for the purposes of [the Audit Act 1990] if the Government has the power –*

---

<sup>5</sup> See Lord Nichols in Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v Wallbank and another [2003] UKHL 37, at para. 7, available at <https://www.bailii.org/uk/cases/UKHL/2003/37.html>.

- (a) by virtue of rights conferred by the constitution on that entity or by some other document regulating that or some other entity; or*
- (b) by means of possession of voting power or holding shares in or relation to that first-mentioned entity; or*
- (c) by some other means*

*to secure that the affairs of that first-mentioned entity are conducted in accordance with the wishes of the Government.*

64. Similar to the Auditor General, the Information Commissioner's oversight extends to public authorities. The PATI Act's language 'controlled by the Government' is substantially the same as the Audit Act's language 'Government-controlled'. The Information Commissioner finds that the descriptions in section 2(2) of the Audit Act are also applicable for determining under the PATI Act whether an entity is controlled by the Government.

*Substantially funded by the Legislature – paragraph 14*

65. Finally, paragraph 14 in column 1 of the Schedule also states that a public authority includes every entity that "is substantially funded by monies authorised by the Legislature". This case does not require the Information Commissioner to address what monies would rise to a level of 'substantial'.

*Public authority's submissions*

66. The Police Service submitted that, after concluding that it did not hold the records, it was not required to transfer the request to the Police Association because the Police Association is not a public authority.

67. The Police Service pointed to the fact that the Police Association is not a government entity, does not use government funding, is fully funded by its members and some officers within the Police Service are not permitted to be members of the Police Association.

*Applicant's submissions*

68. The Applicant submitted that the Police Association is 'part and parcel' of the Police Service and subject to the PATI Act. The Applicant relied upon the Police Act 1974 as the constitution of the Police Service, and particularly, Part V of the Police Act 1974, section 28 of which states that "[t]here shall continue to be established, in the manner prescribed, the body known as the Bermuda Police Association".

### *Police Association's submissions*

69. The Information Commissioner invited the Police Association to make submissions on whether the Police Association is a public authority under the PATI Act. The Police Association stated that it does not carry out any functions of a governmental or quasi-governmental nature. Rather, the Police Association represents its members and focuses exclusively on their welfare.
70. The Police Association explained that it is not owned or controlled by the Government, or substantially funded by monies authorised by the Legislature. Its members own, control, and finance the Police Association. Members select an Executive Committee through an annual election, which is responsible for managing the Police Association's affairs and is accountable only to its members. Each member pays a monthly subscription which is used to fund the Police Association, along with fundraisers, donations, and investments.
71. The Police Association further submitted that its role and responsibilities are similar to that of a trade union, and it would be counter to that function if the Government controls the Police Association in any way.

### *Discussion*

*[a] Does the Police Service hold the meeting minutes?*

72. On the basis of the conclusion reached above, the Police Service did not conduct a reasonable search at the time of the request to confirm that it did not hold the relevant meeting minutes.

*[b] Did the Police Service know that another public authority held the meeting minutes?*

73. The Police Service also decided that it could not transfer the PATI request to the Police Association because the Police Association is not a 'public authority' within the definitions in the Schedule to the PATI Act.
74. If the Police Service does not hold the requested records and decides that the Police Association is a public authority under the Act, section 13(5) of the PATI Act obligates the Police Service to transfer the Applicant's request to the Police Association. The Police Association would be required to process the Applicant's PATI request in accordance with the provisions of the PATI Act and to afford the Applicant the right to review of any decision on the PATI request.
75. If the Police Association is not a public authority, the Police Service was under no obligation to transfer the Applicant's PATI request, nor would the Police Association be obligated to

process the request as a PATI request. The Applicant would also lack any recourse to seek a review of the Police Association's response to his request for copies of its meeting minutes.

76. The Police Association is not included in the list of specifically identified public authorities in paragraphs 1-12 and 15-17 in column 1 of the Schedule to the PATI Act. The Information Commissioner must consider whether the Police Association falls within the categories described in paragraphs 13 and 14 of the Schedule.

*Paragraph 13 – governmental or quasi-governmental functions*

77. The Police Association was established by statutory provision, see regulation 2(1) of the Bermuda Police Association Regulations 1968 (**1968 Regulations**) and section 28(1) of the Police Act 1974.<sup>6</sup> Therefore, if its functions are governmental or quasi-governmental, it falls within the definition of a public authority in paragraph 13 in column 1 of the Schedule to the PATI Act.

78. The Information Commissioner considers the remaining factors outlined in paragraph 61 above: any special authority or powers granted to the Police Association; whether it is democratically accountable to the public; whether it receives public funding in whole or in part, and whether it has an obligation to act only in the public interest.

79. Although prescribed by statute, see section 28(2) of the Police Act 1974 and regulation 2(1) of the 1968 Regulations, the Police Association's objectives are to enable police officers to raise and address issues concerning their welfare and efficiency to the Police Commissioner, joint negotiating body, and the Governor. This includes items such as pensions and conditions of service but expressly excludes matters of discipline or promotions affecting individual members. The 1968 Regulations make no reference to the Police Association promoting public interests or the public good, only the welfare and interests of its members. The Information Commissioner notes the observation of the Chief Justice in Dawson v Commissioner of Police and the Bermuda Police Association [2013] Bda LR 13<sup>7</sup>, at paragraph 24 that "the statutory functions which have been conferred on the Police Association to advance the welfare of its members appear more like private powers than public ones".

---

<sup>6</sup> The Information Commissioner notes the Applicant's submissions that the Police Association was established under the Police Act 1974. However, in fact, the Police Association was established by the 1968 Regulations (prior to the enactment of the Police Act 1974). Its establishment was recognized and continued pursuant to section 28(1) of the Police Act 1974.

<sup>7</sup> Available at <http://www.gov.bm/sites/default/files/SC1302-C-Dawson-v-Police-2013-SC-Bda-14-Civ-13-February-2013.pdf>.

80. The Police Association provided its financial statements for the relevant period to document its funding. The Information Commissioner also reviewed the Government of Bermuda Budget Book for the relevant years. The Information Commissioner accepts that the Police Association has not received government funding, and that it is funded through its members, fundraising, private donations, and investments.
81. The Police Association does not possess special powers under the 1968 Regulations that differ from those found in an ordinary trade union.
82. Finally, the Police Association is accountable only to its members. Its governance framework does not require it to report or be held accountable to the general public.
83. The Information Commissioner is satisfied that the Police Association does not exercise governmental or quasi-governmental functions and that it does not fall within the categories of public authorities in paragraph 13 in column 1 of the Schedule to the PATI Act.

*Paragraph 14 – owned or controlled by the Government*

84. The Information Commissioner does not accept the Applicant's assertion that the Police Association is a part of, or controlled by, the Police Service or Police Commissioner because the Police Association was established by the Police Act 1974.
85. The Police Association acts independently of the Police Service to advocate for its members. Section 28 of the Police Act 1974 expressly affirms the independent functioning of the Police Association. This is supported by the Police Association's By-laws (May 2013).
86. The Information Commissioner is satisfied that the Police Association is not controlled by the Police Service or any other Government entity.

*Paragraph 14 – substantially funded by the Legislature*

87. The Police Association's financial statements, its submissions to the ICO, and the Government of Bermuda Budget Books for the relevant years indicate that the funding for the Police Association comes from its members and private sources.
88. The Information Commissioner is satisfied that the Police Association is not substantially funded by the Legislature.
89. The Information Commissioner is satisfied that the Police Association is not a public authority within the meaning of the Schedule to the PATI Act.

90. The Information Commissioner is also satisfied that the Police Service was not required by section 13(5) of the PATI Act to transfer the PATI request to an entity that is not a public authority.
91. The Information Commissioner notes that even though the Police Service was not obligated to send a copy of the request to the Police Association, it confirmed with the Police Association that the Police Association was willing to assist the Applicant. The Police Service did so with the Applicant's consent and in an effort to help the Applicant locate copies of the meeting minutes.

### *Conclusion*

92. The Information Commissioner is not satisfied that the Police Service conducted a reasonable search for the relevant meeting minutes of the Police Association. In the absence of a reasonable search, the Information Commissioner is not satisfied that the Police Service justified its decision that it did not hold the records. The Information Commissioner requires the Police Service to conduct a reasonable search, consistent with this Decision and to issue a new initial decision.
93. The Information Commissioner is satisfied that the Police Service was not required to transfer a copy of the PATI request under section 13(5) to the Police Association because that body is not a public authority within the meaning of the Schedule to the PATI Act.

### **Decision**

---

The Information Commissioner finds that the Bermuda Police Service failed to comply with Part 3 of the Public Access to Information (**PATI**) Act in responding to the Applicant's PATI request. Specifically, the Bermuda Police Service failed to conduct a reasonable search, in accordance with section 12(2) of the PATI Act and Regulation 5 of the Public Access to Information Regulations, for meeting minutes of the Bermuda Police Association held by the Police Service. The Information Commissioner also finds that the Police Association is not a public authority under the Schedule to the PATI Act.

The Information Commissioner affirms the Police Service's decision not to transfer the request in accordance with section 13(5) of the PATI Act because the Bermuda Police Association is not a public authority under the Schedule to the PATI Act.

In accordance with section 48(1)(b) of the PATI Act, the Information Commissioner requires the Bermuda Police Service to conduct a reasonable search for the responsive records consistent with this Decision and to issue a new initial decision **on or before 8 January 2019**.

## Judicial Review

---

Should the Applicant, the Bermuda Police Service, or any aggrieved party wish to seek judicial review according to section 49 of the PATI Act against this Decision, they have the right to apply to the Supreme Court for review of this Decision. Any such application must be made within six months of this Decision.



Gitanjali S. Gutierrez  
Information Commissioner  
27 November 2018

## Appendix 1: Relevant statutory provisions

---

### Public Access to Information Act 2010

#### Interpretation

- 3 (1) In this Act, unless the context otherwise requires—
- ...
- “public authority” means an entity listed in column 1 of the Schedule; . . .
- (3) In this Act, a reference to a record that is held by a public authority includes a record that is in the possession or custody of, or is under the control of, that authority.

#### Access to records

- 12 (1) Subject to this Act, every person who is a Bermudian or a resident of Bermuda has a right to and shall, on request, be given access to any record that is held by a public authority, other than an exempt record.
- (2) Public authorities shall make every reasonable effort to—
- (a) assist persons in connection with requests; and
  - (b) respond to requests completely, accurately and in a timely manner.

#### Request for access

- 13 . . .
- (5) Where a request under this section is received by a public authority and any record requested is not held by that authority but, to the knowledge of that authority, is held by one or more other public authorities, the public authority that received the request shall, not later than five working days after receipt of the request cause a copy of the request to be given—
- (a) to that other public authority; or
  - (b) in the case of more than one other public authority, to the authority whose functions are, in the opinion of the head of the public authority that first received the request, most closely related to the subject matter of the request.
- ...

#### Schedule, column 1

- ...
13. Every entity that is established by statutory provision and carries out functions of a governmental or quasi-governmental nature
14. Every entity that is owned or controlled by the Government or that is substantially funded by monies authorized by the Legislature

### Public Access to Information Regulations 2014

**Reasonable search**

- 5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.
- (2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

**Transfer of requests**

- 8 (1) As soon as practicable after receipt by the public authority of an application the information officer shall make a determination under section 13(5) of the Act as to whether the application should be referred to another public authority.
- (2) Where an application is transferred to another public authority under section 13(5), the information officer shall within five working days dispatch correspondence to the applicant indicating that the public authority has transferred the applicant to the appropriate public authority, naming the authority.

**Information Commissioner for Bermuda  
Valerie T. Scott Building  
60 Reid Street  
Hamilton, HM 12  
[www.ico.bm](http://www.ico.bm)  
441-294-9181**