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FOR IMMEDIATE RELEASE

Information Commissioner Issues Decision 37/2023

Hamilton, Bermuda. On 27 October 2023, Information Commissioner Gitanjali Gutierrez issued Decision 37/2023, Ministry of Health Headquarters. This Decision brought closure to the PATI request that gave rise to the decision by the Court of Appeal, Information Commissioner v Attorney General [2023] CA (Bda) 6 Civ. The PATI request had sought records related to the 2017 agreement made between the Government and the Brown-Darrell Clinic and the Bermuda Health Care Service for payments to mitigate the impact of the Government’s fee reductions for diagnostic imaging. The Ministry of Health had claimed that the PATI Act did not apply to 77 of the requested records by virtue of section 4(1)(b)(vi) of the PATI Act because the Attorney General’s Chambers had obtained or received the records while carrying out its functions as the legal advisor to the Government.

The Attorney General’s Chambers challenged the legal authority of the Information Commissioner to require copies of the records when necessary for the purposes of her review. Following the Court of Appeal’s landmark ruling in favour of the Information Commissioner in March 2023, the Information Commissioner was able to conduct her review of the Ministry of Health Headquarters’ refusal of the records. The Ministry of Health Headquarters provided copies of the records needed by the Information Commissioner, along with descriptions of records and other information required for the review.

In Decision 37/2023, the Information Commissioner has affirmed, in part, the decision by the Ministry of Health Headquarters denying access to records because the PATI Act did not apply to the records. Commissioner Gutierrez has also reversed, in part, the Ministry of Health Headquarters’ refusal to process a set of the records or parts of records to which the PATI Act applies. She ordered that the Ministry of Health Headquarters process the records and parts of records and issue an initial decision to the Applicant on or before Friday, 8 December 2023.

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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.