



Policy and Strategy Section

MEMORANDUM

TO: Information Commissioner (VIA EMAIL ONLY)

COPY: Cabinet Secretary
Permanent Secretary, Ministry of Health

FROM: Manager, Policy and Strategy Section

DATE: 26 November 2018

SUBJECT: Overview of Case #341

1. The purpose of this memorandum is to inform and invite discussion on the ability of the Government to fulfill the statutory obligations of the Public Access to Information (PATI) Act 2010 (the Act) with the current state of records management and level of resourcing required to respond to requests.
2. These concerns, present before and during these initial years of implementation of the Act, are greatly exemplified by the fulfilment of PATI Request #341.

Context

3. The Permanent Secretary, Ministry of Health requested assistance from the PSS to respond to the Information Commissioner's Office (ICO) ref - Order 25082016-02 and Decision Notice 03/028 to issue a "new initial decision" and "an internal review decision" for PATI Request #341, a request for records related to inspections, complaints, investigations, safety concerns and accidents involving day care centres and providers.
4. The Ministry of Health had initially denied access under section 16(1)(c) of the Act because fulfilling the request would cause a substantial and unreasonable interference with or disruption of the work of the Ministry.
5. Section 16(1)(c) of the Act is as follows:

Refusal of request on administrative grounds

16 (1) A public authority may refuse to grant a request if—

(c) in the opinion of the head of the authority, granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority

6. The internal review decision upheld the denial of access for this same reason and denied access for specific components under exemptions of personal information s23(1), commercial information s25(1)(c), and information received in confidence s26(1)(a).
7. The Ministry of Health believed it had evidence of the volume of time required to garner the relevant documents. However, the ICO annulled the Ministry of Health's decisions; finding that fully processing the request "will not cause a substantial and unreasonable interference or disruption" of the other work of the Ministry.
8. The PSS agreed to assist the Ministry of Health and quantified the effort utilized to fulfill the new initial decision and internal review decision as per the Order.
9. During the course of responding to this request, the requestor asked for more current records on 8 May 2018. In her letter of 16 July 2018, the Commissioner indicated that the terms of the Supreme Court Order were retained and to be complied with, while the request for current records was to be treated as a new and separate PATI request.

Role of PSS

10. The PSS worked with the Ministry of Health Information Officer, to respond to the requester on the "new initial decision" as specified in the Order and on the new PATI request for more current records; and worked with the PS to complete the internal review required by the Order.

11. The volume of records included the following numbers of facilities:

	PATI Request #341 2015-16	New PATI Request 2017-18
Day Care Providers	71	55
Day Care Centres	62	55

12. The time spent on each of the relevant activities was quantified and is presented, below:



GOVERNMENT OF BERMUDA

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ACTIVITY	HOURS SPENT	
	PATI Request #341 2015-16 Records	New PATI Request 2017-18 Records
Retrieving Documents and Records (estimated)	56	61
Public Interest Test	14	
Copying and scanning documents	5	14
Acquiring materials for redaction	2	3
Coding and final checks	5	5
Redaction	17	16.5
Management of Records (sorting, ordering)	7	7
Decision Letter	16.5	4
Communications with Public Authority	9	30
Communications with ICO and Requester	10	1
Internal Review	7	7
TOTAL: *297 hours	148.5	148.5

*This does not include the actual hours contributed by Ms. Verlina Bishop;
which is estimated to be 87. This is accounted for in the costing table below

The consolidated cost of completing the task is outlined in the table below.

Officer	Hours Worked	Hourly Rate	Cost \$BDA
Verona Darrell	15	33.29	499.31
Denika Hollis	60	33.29	1,997.22
Kim Musson	12	32.20	386.35
Other Env. Health Staff	30	33.29	998.61
Nikola O'Leary	99	63.91	6,327.19
Jessica Sharpe	57	14.29	814.29
Gilbert Rowling	5	63.91	319.56
Marisa Sharpe	4.5	63.91	287.60
Lisa Johnston	5.5	74.48	409.65
Lisa Hollis	5	33.29	166.44
David Kendall	4	84.91	339.63
Verlina Bishop	87	55.78	4,853.12
Total hours spent	384		
Total labour cost			17,398.95
Overhead @ 15% of labour cost			2,609.84
Total Cost \$BDA			20,008.79

13. The time spent on retrieving documents refers to estimates determined through discussions with colleagues in Environmental Health and retrieval of records subsequent to the Order. This does not include the time spent by the Ministry PS, Health's Information Officer and others prior to the Commissioner's Order. PSS has been advised that this effort consumed over 40 hours of time.

Issues Arising

Administrative burden

14. The ICO found that fully processing the request "will not cause a substantial and unreasonable interference or disruption" of the other work of the Ministry. A question remains; what is meant by substantial or unreasonable? Especially since the total hours associated with this request was almost 400 hours, which is equivalent to over eleven weeks of work (@ 35hrs/wk). This is well over the six weeks given to execute a request and does not take into consideration any delays or hold-ups in the process.
15. This matter appears to be an example of an administrative burden. However, the ICO was not satisfied that the Ministry was facing an administrative burden when presented with a quantified and itemized account of the supporting factors. This, in part perhaps resulted in the ICO rejecting the claim to deny on the grounds of administrative burden and consequently ordered a "new initial decision". A lesson learned is that Information Officers must provide a comprehensive rationale for the use of administrative burden explaining considerations such as how the records are kept, processing time estimates, and the volume and nature of records.
16. In some instances the lack of a comprehensive case to support the claim of administrative burden is a result of the inability of the Public Authority to know what to expect, hence the Ministry's under-estimation during the ICO Review. This case has drawn attention to the fact that records retrieval is only one stage in the process. Subsequent stages, and the resources, effort and time that goes into these stages, should also be included in outlining the case for refusal on administrative grounds.

Lack of staff

17. Staff understand that they have a duty to honour all PATI requests and to give them due diligence. However, the most frequently expressed concern in the 2017 Information Officer Survey was the unreasonable burden on stretched resources, and the ability to balance regular business duties with responding to PATI requests. Most Public Authorities lack staff with the technical competence and time to dedicate their full time focus to processing PATI requests. As the role of an Information Officer is not a full time position, the person who

assumes this role must administer their PATI responsibilities alongside their regular work duties.

18. The almost 400 hours required to fulfill this request did not enable the Information Officer alone to handle the request within the time frame required; and the associated duties could not be delegated as there was a shortage of staff. It is for this reason that The Ministry of Health sought the assistance of PSS to facilitate the request. Whether the Ministry devoted an individual or multiple resources to administer this process it would have resulted in a substantial interference with and disruption of the work of the Ministry. Notably, this was only one request, and until PSS's assistance was engaged, the Ministry of Health had to suspend its policy/legislative development initiatives as its three Policy Analysts had to be deployed to processing PATI requests.
19. As the Government has been through hiring freezes and been forced to do more with less, staff have been stretched and in some instances find it difficult to complete their core responsibilities outlined in their job descriptions. This not only affects the Information Officer's ability to administer their functions, but also their ability to seek assistance and retrieve records. Environmental Health understandably had no dedicated resources for administering PATI. Its investigation officers were stretched with primary work and therefore PATI was not deemed a priority. This caused delays in the Information Officer receiving records required to execute the request therefore adding additional time to administer the request.
20. It is noted that an appropriate response to a PATI request should be considered a priority; even if a case is made for the records not to be released.

Records management systems

21. Records Management is currently a key weakness within the government which has compromised public authorities' efforts to comply with PATI requests in a timely manner. An effective records management system would enable a Public Authority to easily locate records and therefore substantially reduce the time associated with the records retrieval process.
22. The way in which a Public Authority stores their records may sometimes not align with easily accessing them. The Department of Health sorts their records by address, not by facility or type of facility, therefore retrieving documents/records in response to a PATI request on child care facilities would require pulling each file individually to retrieve the relevant documents, therefore causing an administrative burden. Even narrowing the requested records would result in an almost similar amount of time, as the Information

Officer would be required to manually search the same number of physical files, copy each and return the originals to the file system.

23. Lack of electronic filing systems also provide challenges in delivering PATI timely and effectively as manual searches tend to take a substantial amount of time and resources. Most of the requested records from the Ministry of Health were stored manually and consisted of paper files which required photocopying and scanning, which added time to the processing of the request. As the Ministry also did not store statistical information requested to assist the requester, the Information Officer would have to do a manual search for the requested records to provide a response.
24. Additionally, electronic correspondence and documents regarding specific cases of safety and accidents were held by individual officers and not filed in the manual system. This meant that repetitive appeals were necessary to gather all relevant documentation and records.
25. With the manual storing of records, challenges arise: where records are misplaced; not collected in a consolidated manner; or filed with the individual technical officer rather than in a centralized folder. These are the factors encountered by PSS which contribute to the burden on the Information Officer.
26. Upon reflection, if a department gathers a large amount of information about clients, a consequence may be that it will need to expend additional resources or find ways to process requests more efficiently to provide that information to clients upon request.

Recommendations

27. *Improved Records Management Systems* - Public Authorities need to assess the way in which they manage their records, and identify any gaps or weakness. In some instances this may be modernizing the approach to records management. In others it involves ensuring that the records management system in place is effectively used as it is intended. If records are properly managed, and the records management system allows for ease of access, the PATI process is much smoother and would enable the records retrieval process for Information Officers to be more effective. In this case it is recommended that a complaint file be created for each category of inspections so that such complaints and follow-up could easily be retrieved.
28. *Information Officer Training* - More training needs to be given to Information Officers on adopting a posture of saying yes to all PATI requests unless a case is made for refusal. This is a fundamental tenant of PATI. This should include the extension of timelines to accommodate a request. Training must also be given on a successful consultation process. Consultation should aim at reaching agreement on a modified request with a revised or

clarified scope that an agency can reasonably process. However, when an administrative burden is a foreseeable outcome, more training is needed on crafting responses which will enable officers to better articulate their arguments and demonstrate administrative burden. In proving administrative burden, Information officers should include, time estimates for not only records retrieval but also other stages of the process such as reviewing records, public interest test, crafting a response and redaction.

29. *Records Management Responsive to PATI Requests* – Public Authorities could strengthen the process for proactive disclosure by anticipating the information of interest to the public and ensuring the records management system can accommodate the records for these searches. Anticipating future requests will better prepare the Public Authority to make provisions to ensure that the records are easily accessible.
30. *Parameters surrounding Administrative Burden* – Taking into account missed steps by Public Authorities in case #341, still, a general consensus needs to be determined with the ICO on what constitutes a substantial and unreasonable interference with or disruption of the work and its relation to a denial based on administrative burden. At present there are no clear guidelines on what equates to suitable justification or a reasonable response. This may result in a standard based on the view of the Information Commissioner which may be at variance with the supporting data to demonstrate administrative burden on the Public Authority.
31. When the parameters around administrative burden are established, it will avoid or minimize doubt and therefore allow expectations to be met. In countries such as Australia, they have imposed a 40 hour processing limit; however, it cannot be used as a soft cap. They have also imposed higher fees under certain circumstances in order to curtail the burden of processing requests.
32. *Dedicated Resources* – The responsibilities of PATI are not tied to any individual's job description and therefore processing a PATI request provides an extra duty for Information Officers with no compensation. This may be manageable if a Public Authority gets one PATI request a year. However the Ministry of Health has been inundated with PATI requests which has disrupted their ability to effectively and consistently perform their primary/core functions. This not only affects the Information Officer but also the Head of the Authority who is responsible for conducting the internal review. In these instances consideration should be given to providing some form of dedicated resources whether it be including the PATI Information Officer duties into job descriptions or providing additional resources.