



GOVERNMENT OF BERMUDA
Ministry of Legal Affairs

Ref: 19/011

13 March 2019

Ms. Sam Strangeways
2 Par-la-Ville Road
Hamilton
HM08

Sent by email: sstrangeways@royalgazette.com

Subject: **Decision Notice – Public Access to Information Act 2010**
Request for records 'the full report relating to allegations of misconduct, etc.'
Ministry of Legal Affairs Headquarters

Dear Ms. Strangeways,

I am writing to notify you of the decision in reference to your PATI request for records made to the Ministry of Legal Affairs Headquarters, dated 30 January 2019. Your request was acknowledged by email correspondence on 1 February 2019. You asked for the following records:

1. *"The full report into allegations of misconduct against Alfred Maybury, which was conducted by the Ministry of Legal Affairs and Department of Internal Audit [...]"*
2. *Mr. Maybury's public service pay grade.*
3. *The number of acting directors of DCFS during the period of Mr. Maybury's leave and the amount spent on additional pay for those employees during the period Aug 23, 2018 to January 28, 2019."*

With your agreement, I transferred the part of Item 1 of your request to Department of Internal Audit; and Item 3 of your request to the Department of Child and Family Services, in accordance with the terms of section 13 of the Public Access to Information Act ("the Act"). You should receive responses from those public authorities separately.

Decision on Item 1 of your PATI Request

After careful analysis, it is decided that the Ministry of Legal Affairs cannot disclose whether a record exists that will satisfy your request for "The full report into allegations of misconduct against Alfred Maybury, which was conducted by the Ministry of Legal Affairs [...]". This is because section 38 of the Act permits public authorities to "refuse to disclose whether a record exists if the record itself, if it exists or were to exist, is or would be an exempt record", unless it is in the public interest.

The existence or non-existence of the records you have requested is not in the public interest because to reveal such, on its own, would add unnecessary confusion to misinformation which is already present in the media and public domain.

Additionally, whilst there may be public interest in allaying public misgivings and improving public understanding about the investigation and conduct of public officers, this does not outweigh the substantial public interest considerations against disclosure.

Investigations of this kind are highly confidential, relying on information received in confidence as described in section 26 of the Act. They require the candid, voluntary, participation of the person being investigated, witnesses, complainants and alleged victims. If investigation reports of this kind are disclosed publicly, this will likely prejudice and undermine future investigations. This is because participants will be less willing to engage openly with investigators because disclosure of the report will erode any assurances of confidentiality. Further, the Ministry is particularly concerned that because the nature of the allegations concerned the treatment of children, the severity of harm from disclosure is increased. Investigators will be unable to conduct fair and effectual investigations whenever allegations of this nature are made to officials if confidentiality is not preserved. This will ultimately lead to instances of persons simply not coming forward to make complaints in the future.

Therefore, Item 1 of your request is refused under section 38 of the Act. Additionally, the records requested would otherwise be exempt from disclosure in accordance with section 26 (Information received in confidence); section 30 (Operations of public authorities); and section 34 (Law enforcement); and upon applying the same public interest test.

Decision on Item 3 of your PATI Request

Your request for the pay grade of Mr. Maybury will be disclosed in full as public officer pay grade information is routinely published in accordance with Part 2 of the Act. This will be provided in a separate document.

Your right to seek Internal Review

If you are dissatisfied with this decision, or how your request was handled, you may ask for the Permanent Secretary (as the Head of the public authority) to conduct an internal review. You have six weeks from being notified of this decision to make a request for internal review. All requests for internal review should be made in writing to the information officer using the contact information provided.

Sincerely,



Onika Mendes
Information Officer
Ministry of Legal Affairs Headquarters



The Cabinet Office

105 Front Street Hamilton HM 12 Bermuda
Tel: 441-292-5501 Fax: 292-8397

Ref. No.

26th March 2019


Ms. Samantha Strangeways
c/o The Royal Gazette
Par-la-Ville Road
Hamilton
(By email)

1. By a Request dated 30th January 2019, the Requester sought, inter alia, :

“The full report into allegations of misconduct against Alfred Maybury, which was conducted by the Ministry of Legal Affairs and Department of Internal Audit. Mr. Maybury was placed on paid administrative leave on August 23, 2018 and returned to work on January 28, 2019.”
2. The Information Officer for the Ministry of Legal Affairs received the request and referred part 1 of the original request to the Director of Internal Audit for her to respond to this aspect of the request.
3. In an email of 27th February 2019, the Director of Internal Audit responded as follows:

“Under the PATI Act, the Department of Internal Audit is exempt from PATI request(sic) except for administrative information. This means that the(sic) all audit and compliance reports produced by the Internal Audit Department are exempted from disclosure under PATI. This practice is to achieve compliance not only with PATI, but also with the Internal Audit Act, the Internal Auditing Standards and its Code of Ethics and Professional Conduct.”
4. This response was provided to the Requester on 1st March 2019 and by an email of 7th March 2019 the Requester sought an internal review of the decision from the Department of Internal Audit. As part of the internal review, the Requester asked that I consider:
 - (i) Whether part 1 of the (original) request should have been dealt with solely by Internal Audit,

- (ii) Whether any other public authority holds the records requested (and so should have processed the request), and
 - (iii) Whether it was correct to withhold the records.
5. Adopting the same numbering in paragraph 4. above, I have considered the matter as requested and set out my findings as follows:
- (i) A portion of Part 1 of the PATI request sought records which were thought to be held by the Department of Internal Audit. The Information Officer for the Ministry of Legal Affairs properly forwarded part 1 of the request to the Department of Internal Audit for the Director to respond. The Director did properly respond to the request; her response was transmitted to the Requester by the Information Officer for the Ministry of Legal Affairs on 1st March, 2019 (at the Director's request). Therefore, in my view, nothing substantive turns on whether the request should have been dealt with solely by the Department of Internal Audit.
 - (ii) Section 8(1) of the Internal Audit Act 2010 sets out the following : *The Director shall, as soon as practicable after concluding an internal audit, transmit a final report thereof to the auditee and to the Permanent Secretary under whose supervision the auditee falls.* No other public authority would be seized of a report of the Department of Internal Audit. In this case, no other public authority holds the records requested and therefore no other public authority should have processed the request.
 - (iii) Section 4(1)(b)(vii) of the Public Access to Information Act 2010 dictates that the Act does not apply to records obtained or created by the Department of Internal Audit.
6. Accordingly, I concur to with the denial of your request by the Department of Internal Audit, as the PATI Act does not apply to records obtained or created by the Department of Internal Audit in the course of carrying out its functions except where those records relate to the general administration of the Department. Your request relates to records which are non-administrative, thus there is no public right of access to such information under Part 3 of the PATI Act.



Maj. Marc T. Telemaque LVO, ED, JP
Secretary to the Cabinet
Government of Bermuda