



Government of Bermuda

Ministry of National Security

7th June 2022

Ms. Sam Strangeways.

Via Email

Dear Madam,

**Re: Public Access to Information Act 2010 (Act)
PATI Request 650 – Internal Review**

I write in respect of your request for an internal review pursuant to Section 41 of the Act. In particular you requested that I:

“review the redactions and whether the exemptions under sections 23, 26, 29 and 35 of the Pati Act have been correctly applied, with the public interest test in mind.

I am also concerned that the record of the minister’s statement is incomplete – the minister was due to read this in Parliament when he was stopped by the Speaker – see here:

<https://www.royalgazette.com/politics/news/article/20190216/pepper-spray-payouts-statement-postponed/>

I was requesting the statement that the minister had in front of him when he was stopped from delivering it.”

I must first apologise for not meeting the statutory six week deadline for the review in this case. The review has been hampered by the sheer volume of records, inaccessibility of some and relevant staff being out with covid during the period.

Your PATI request resulted in an initial batch of over 144,000 records. A further filter of the search requirements resulted in tens of thousands of records. The PATI Officer (Officer) and two other members of staff spent between mid-

December 2021 and the 22nd February 2022 reviewing the records. They reviewed each record individually to see if it was:

- 1) an exempted record; or
- 2) a relevant record; and
- 3) if any part of the relevant record should be redacted.

Those records that were relevant records were released to yourself, some with redactions.

Owing to the volume of records, it would unreasonably interfere with and disrupt other work for me to review all of the records, bearing in mind that three staff took two and a half months to conduct their review.

I have, however, met with the Officer who managed your request and reviewed the methodology used and a sample of the records that were released including those with redactions.

I will now address the findings of my review:

- 1) I am of the opinion that, pursuant to the Act you should have been advised that your request would need to be refined further or it would be refused on administrative grounds. In particular, that the volume of records would unreasonably interfere with and disrupt other work. This is evidenced by the fact that it took three staff two and a half months to review the records manually.
- 2) In respect of the Minister's statement to the House, which you have specifically requested, the record that has been provided to you is the only record that the Officer has been able to locate. The Officer has not been able to locate a record of the statement that the then Minister "had in front of him, when he was stopped from delivering it".

I am satisfied that the Officer has taken all reasonable steps in this regard which included a manual search of the Ministry files, a search of electronic records including emails. The Policy Analyst who would normally draft the Minister's statements drafted what you have and does not have any other copy of the record. Enquires were also made to the House of Assembly and of the Minister's personal assistant.

Some Minister's do write their own statements or edit ones drafted for them and may not share the final version with public servants. As such it

would not be unusual for there not to be any other record of it within the Ministry.

- 3) There were records deemed to be exempt that were not released to you. Unfortunately, copies of the exempted records were not retained on the PATI file so I have been unable to review them. However, I have been advised that they comprised Cabinet papers and settlement agreements. Both the Cabinet papers and settlement agreements are exempted records pursuant to Section 26, 27 and 35 and I am not of the view that it is in the public interest to release them.
- 4) There were 5,129 encrypted emails of a former Permanent Secretary that the Officer could not open and access as neither she nor the Department of Information and Digital Technologies have an encryption key that would allow the records to be opened. As such the Officer could not determine if they were relevant records that could be released in whole or part or were exempt records. The only way to access these records would be for one of the two parties to the email, opening and printing off each record. The Officer did not make enquiries in this regard to the parties and I find that she should have done so.
- 5) Records of correspondence with external lawyers were released to you with the personal details of the lawyers redacted. It also included correspondence marked as “privileged and confidential “. All such correspondence should only be released with the written consent of both parties who created such correspondence. The consent was not sought and the records should not have been released to you.

This concludes my review of the decisions made by this authority in respect of your PATI request made under Part 3.

The Information Commissioner on the 11th May 2022 issued a decision notice 14/2022 requiring that I issue an internal review decision to you with a copy to her on or before Wednesday 8th June 2022. I am therefore copying the Information Commissioner on this letter as required.

Please note that you have the right to apply to the Information Commissioner for a review of my review under Part 6 of the Act.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Chris Farrow', written over a faint circular stamp or watermark.

Chris Farrow
Permanent Secretary

cc: Information Commissioner