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To: All Media

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**Information Commissioner Issues Six Decisions
Explains a “Frivolous or Vexatious Request”**

Hamilton, Bermuda. On 19 December 2019, Information Commissioner Gitanjali Gutierrez issued six decisions, one of which sets out the meaning of “frivolous or vexatious” requests under section 16(e) of the Public Access to Information (PATI) Act 2010. The six decisions were the following:

- [30/2019](#), Ministry of Health Headquarters, concerning medical cannabis import application records
- [31/2019](#), Ministry of Health Headquarters, concerning medical cannabis import application records
- [32/2019](#), Ministry of Health Headquarters, concerning physician referral letters
- [33/2019](#), Department of Child and Family Services, concerning a failure to decide
- [34/2019](#), Bermuda Police Service, concerning correspondence with a company
- [35/2019](#), Ministry of Finance Headquarters, concerning records related to the National Anti-money Laundering Committee

In [Decisions 30/2019](#), [31/2019](#), and [32/2019](#), the Applicant had sought, through a series of related PATI requests, to obtain information about the number of applications for medical cannabis import licenses, along with details for the physicians supporting the applications and their practice areas. In [Decision 32/2019](#), the Information Commissioner considered a refusal of one of the PATI requests by the Ministry of Health Headquarters (Health Ministry) on the grounds that, in light of the prior requests, the request in this case was frivolous or vexatious.

The Information Commissioner explained that the provision on frivolous or vexatious request is aimed at “preventing abuses by requesters of the processes set out under the PATI Act.” A request may be frivolous or vexatious if it was made in bad faith, or when the requester’s pattern of conduct is such that it amounts to an abuse of process.

In [Decision 32/2019](#), the Information Commissioner explained that a request is made in bad faith if it is made with an illegitimate or dishonest purpose, which may be evidenced by the requester’s unwillingness to cooperate with a public authority. The Information Commissioner highlighted that even though a request may be used in a manner which may be disadvantageous to the public authority, this does not imply that it was made in bad faith.

In this Decision, the Information Commissioner also set out a non-exhaustive list of relevant factors which may be considered in determining if a pattern of conduct amounts to an abuse of the right of access. This

includes, for example, the actual number of requests made, as well as the nature and scope of the request. She emphasized, however, that a large number of requests alone is not an indication of abuse. To be considered an abuse, the number of requests made by the same requester must be so great and must be filed at or about the same time or in close succession so that no public authority could possibly be expected to deal with them properly.

More details on frivolous or vexatious requests can be found in [Decision 32/2019](#), which should be read together with the related [Decisions 30/2019](#) and [31/2019](#).

In [Decisions 30/2019](#) and [31/2019](#), the Information Commissioner considered the Health Ministry's prior refusals to grant access to records relating to medical cannabis applications, including the details of the local physicians supporting the applications. The Information Commissioner found in [Decision 30/2019](#) that the Health Ministry was correct to deny access under the personal information exemption. In [Decision 31/2019](#), however, she found that it was incorrect for the Health Ministry to conclude that it does not have the anonymized records sought by the Applicant.

In addition to the decisions relating to the Health Ministry, the Information Commissioner issued [Decisions 34/2019](#) and [35/2019](#).

[Decision 34/2019](#) affirmed the Bermuda Police Service's refusal to disclose its records of correspondence with a particular company. The Information Commissioner agreed with the Bermuda Police Service that disclosure could reasonably be expected to prejudice the commercial interests of the company and is thus exempt under section 25(1)(c) of the PATI Act.

In [Decision 35/2019](#), the Information Commissioner considered the reasonableness of the search conducted by the Ministry of Finance Headquarters (Finance Ministry) in response to a request for records relating to the work of the National Anti-Money Laundering Committee (NAMLC). Since the Finance Ministry inappropriately limited the scope of the Applicant's PATI request, the Information Commissioner concluded that its search was unreasonable. She also emphasized that the duty to assist in the PATI Act requires the Finance Ministry to explain the NAMLC's procedures and processes with the Applicant so that the Applicant may identify alternative records that may satisfy the PATI request. The Finance Ministry was ordered to fulfil its duty to assist and to conduct additional searches within 6 weeks.

Full version of the Decisions can be accessed online at www.ico.bm.

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Editor's Notes:

The Information Commissioner's Office 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 subject 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 conduct a review and the decisions by the Information Commissioner are legally binding.

Further information about the Information Commissioner's Office is available at www.ico.bm.