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To: All Media

## **FOR IMMEDIATE RELEASE**

### **Information Commissioner issues Decision 01/2018**

Hamilton, Bermuda. On 25 January 2018, Information Commissioner Gitanjali Gutierrez issued [Decision 01/2018](#), which reversed a decision by the Bermuda Tourism Authority (BTA) to withhold the entire record in response to a request made under the Public Access to Information (PATI) Act 2010 for records related to employee compensation. The Information Commissioner ordered disclosure of information related to a discretionary financial benefit and a redacted version of the withheld record to safeguard personal information.

BTA had originally withheld access to the record under section 25(1)(d) of the PATI Act for records whose disclosure could reasonably be expected to cause prejudice to negotiations and under section 30(1)(b) when disclosure would have a significant adverse effect on management functions. During the Information Commissioner's investigation, BTA made a late assertion of the personal information exemption under section 23(1) of the PATI Act, which the Information Commissioner considered.

The Information Commissioner found that part of the withheld record did contain personal information, such as an employee's actual base salary, start date, and performance evaluation information. In considering the public interest test, the Information Commissioner weighed "the substantial privacy interest of individuals who are BTA employees" against the "strong interests in accountability and transparency for public expenditures and the need for better understanding of BTA's compensation process". In light of "the extensive public disclosures BTA has already made", the Information Commissioner found that disclosure of actual compensation figures would be an "unjustified intrusion into the personal information of employees at BTA".

The Information Commissioner found, however, that some of the compensation details that BTA previously published, such as actual base salaries, were in "band ranges that are too wide, making it difficult for the public to get a true picture of the effectiveness of its public spending". As a result, the Information Commissioner concluded that "to promote the public interest in transparency and the effective use of public funds, while continuing to protect the privacy interests of the employees", BTA must disclose its actual staff salary bands in a maximum of \$10,000; actual maximum incentive percentages for Chiefs in bands of a maximum of 5%; and actual performance incentive payments for Chiefs in bands of a maximum of \$10,000.

The withheld record also included information about a discretionary financial benefit. The Information Commissioner found that this information was excluded from the definition of personal information by virtue of section 24(2)(c) of the PATI Act. The Information Commissioner noted "that disclosure is particularly important with respect to discretionary financial benefits paid from public money because such an award is

not based on set criteria for granting the benefit or calculating its amount, as is the case with contract payments or performance incentive payments. Disclosure through the PATI Act allows for public accountability for the discretionary spending of public funds". The Information Commissioner also found that the exemption under section 30 for prejudice to negotiations was not justified because no negotiations were identified involving the employees to whom the information relates, as required by this exemption.

A full version of [Decision 01/2018](#) can be access online at [www.ico.bm](http://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 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.

Further information about the Information Commissioner's Office is available at [www.ico.bm](http://www.ico.bm).