



# MONTHLY ROUNDUP

Volume II, Issue 7

July 2019

## WELCOME!

The Information Commissioner's Office (ICO) welcomes you to the July 2019 issue of our Monthly Roundup! The ICO is an independent, public office that promotes and oversees the use of the Public Access to Information (PATI) Act 2010 in Bermuda.

Section 12(1) of the PATI Act gives Bermudians and residents of Bermuda the legal right to access records held by public authorities, unless the PATI Act allows a public authority to withhold access to that record. PATI requesters are empowered under the Act to pursue and enforce these rights. The institution of the Information Commissioner in Bermuda is key to safeguarding this statutory framework.

In Bermuda, public access to information community stakeholders include information officers, heads of public authorities, requesters, the public, as well as many other local special interest groups.

The ICO is guided by its core values: **Independence, Integrity and Fairness**. We hope that the information in our Roundups reinforces the benefits of the PATI Act for Bermuda, increases the public's understanding of how to use their legal rights under the PATI Act, provides guidance to public authorities about their responsibilities under the PATI Act, and builds confidence in the ICO's role in safeguarding these rights and responsibilities.

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- Transferring PATI requests: What do public authorities and PATI requesters need to know?
- Recent Information Commissioner's decisions and resolutions
- Our monthly recap: Statistics for our cases

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Transparency around public authorities' spending, decision-making and performance further strengthens accountability to the public in concrete, meaningful ways. With the right to access public information, we are witnessing an even playing field emerge between the public and the public authorities that are making decisions on their behalf.

**Gitanjali Gutierrez,**  
Information  
Commissioner,  
ICO 2018 Annual  
Report

## DECISIONS ISSUED

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In July, the Information Commissioner received 7 new applications. She issued 2 decisions, resolved 2 cases and closed 1 invalid application.

**The PATI Act is a powerful tool, but it also has limits.** In **Decision Notice 19/2019**, the Information Commissioner considered whether or not the PATI Act applies to a report produced by the Department of Internal Audit (Department).

A PATI request was transferred to the Department requesting a copy of the report into allegations against the Director of Child and Family Services. The request was refused by the Department under section 4(1)(b)(vii) of the PATI Act, which states that the PATI Act does not apply to records created or obtained by the Department in the course of carrying out its functions.

After conducting a careful review, which included reviewing the report, the Information Commissioner agreed with the Department's refusal. The Information Commissioner confirmed that the report was created by the Department in accordance with its functions under the Internal Audit Act 2010, and was not related to the general administration of the Department. The Information Commissioner was satisfied that the PATI Act does not apply to the report.

**To transfer or not to transfer? That was the question in the Information Commissioner's review discussed in Decision Notice 20/2019.** A PATI request was made to the Accountant General's Department (Department) for records relating to payments made to Sandys 360. The Department transferred the request to the Ministry of Finance. The Information Commissioner found that the Department did not properly determine whether it held records responsive to the PATI request before it transferred the request. As a result, the Information Commissioner found that the transfer decision was incorrect.



In **Decision Notice 20/2019**, the Commissioner emphasized that a transfer of a PATI request should only be considered after the public authority determines that it does not hold the responsive records. The Commissioner further clarified that a transfer decision should not be based on irrelevant factors, such as which public authority can process the request in a more efficient manner.

In addition, if a public authority holds records but knows that another public authority may also hold responsive records, the first public authority is required to inform the requester of this, in accordance with the duty to assist in the PATI Act.

## RESOLUTION

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**Should public authorities revisit their decision to refuse access to records? It may be worth it!** Sometimes it may be worth it for a public authority to reevaluate its decision to refuse access to records. The opportunity for a public authority to do so exists even during the Information Commissioner's review.

In a case that was resolved by the ICO in July during an early resolution, the public authority decided to take another look at the record which was partly redacted under section 26 exemption in the PATI Act. After reviewing the record, the public authority acknowledged that the redaction was an administrative error and section 26 exemption does not apply. The public authority decided to disclose the record in full to the requester. As a result, the Information Commissioner was satisfied that the early resolution was successful and that no decision by the Commissioner was required.

## Global Health Challenge: Wellness in 2019

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The ICO team has joined in on the Global Health Challenge! This worldwide initiative focuses on promoting healthier lifestyles for participants, one "step" at a time. "The Sunshiners" are registered and ready to take on this fun way to get healthier. Our Max Buzz devices are synched, we are logging our steps, tracking our activities and drinking our water! The Sunshiners are choosing wellness in 2019. We are ready for the challenge!



## Transfer of PATI Requests: What do Public Authorities and PATI Requesters Need to Know?

Section 13(5) of the PATI Act requires a public authority to transfer a copy of a PATI request to another public authority when the first authority does not hold the records requested but knows that another public authority has them. But what if a public authority holds records responsive to a PATI request and also knows that another public authority holds some, too?

### What does this mean for the public authority which first received the request?

The duty to assist requesters under section 12(2)(a) of the PATI Act requires the public authority which first received the request to inform the requester that responsive records may also be held by another public authority. This is important because it allows the requester to decide whether to make a separate PATI request to that other public authority. The PATI Discussion Paper (2006) discusses this scenario in paragraphs 2.10:

[A] public body might only hold some of the information requested while another public body or department might hold additional data that is relevant to the request. In such cases, the public body must advise a requester accordingly, and he or she could then choose to approach the other public body or department.

**Remember:** A PATI request that is comprised of different parts or items can be transferred either in full or in part. For example, if a public authority holds records responsive to 'Item 1' of the request, but does not hold records responsive to 'Item 2' and is aware that another public authority holds them, it should process the PATI request in relation to Item 1 only. It should transfer Item 2 of the PATI request to the other public authority.

### What does this mean for the public authority receiving the transferred request?

A public authority receiving a copy of a transferred PATI request, either in full or in part, is required to process the PATI request. This means it should search for the records responsive to the PATI request and issue an initial decision which either grants or refuses access to the records. The initial decision should be issued within six weeks of the date of receiving a copy of the transferred request.

**But what does this mean for the PATI requester?** Continue reading to find out more...

### ICO Statistics as of 31 July 2019

(from 1 April 2015)

|   |            |                         |           |
|---|------------|-------------------------|-----------|
| Total applications for independent review by the Information Commissioner ..... | <b>124</b> | Closed: Decided .....   | <b>44</b> |
| Pending investigations .....  | <b>39</b>  | Closed: Resolved .....  | <b>14</b> |
| Applications pending validation .....   | <b>2</b>   | Closed: Abandoned ..... | <b>7</b>  |
|   |            | Closed: Invalid .....   | <b>18</b> |

## Transfer of PATI Requests, continued...

### What does this mean for the PATI requester?

If a requester is informed that responsive records may be held by another public authority, a PATI requester may wish to consider making a separate request to that other public authority.

The public authority transferring a PATI request must inform the requester of: (i) whether the PATI request was transferred in full or in parts; (ii) the parts of the PATI request that are transferred (if transfer is in part); (iii) the public authority receiving the transferred request; and (iv) the contact details of the Information Officer at the other public authority.

If a request is transferred to another public authority in full, the requester should expect an initial decision from the public authority receiving the transferred request only. Any communications should be directed to that public authority. However, if only part of a request is transferred to another public authority, the requester should expect an initial decision from each public authority that is now processing separate items of their PATI request.

### SAVE THE DATE

#### Right to Know Week: I WANT TO KNOW!

23-28 September 2019

#### International Right to Know Day:

28 September 2019

Watch this space as the ICO prepares for the global celebration of the right to access information and the principles of openness, accountability and transparency. The ICO is scheduling a week-long series of activities to promote awareness of the rights under the PATI Act in Bermuda using the theme "I Want to Know!"  
More details to follow!

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#### Information Commissioner's Quarterly Briefing for Public Authorities

Wednesday, 11 September 2019 **NEW DATE**

Wednesday, 4 December 2019 **NEW DATE**

Wednesday, 11 March 2019 **NEW DATE**

RSVP will be required. Registration details will be emailed to public authorities.