

MONTHLY ROUNDUP

Volume IV, Issue I

DECEMBER 2020/JANUARY 2021

WELCOME

The ICO 2020 Annual Return process with public authorities has concluded and the Information Commissioner is preparing her Annual Report for tabling by the end of March 2021, as required under the PATI Act. Since we started distributing a return package to all public authorities, the public has seen an increase in the number of published Office Gazette notices with information on public contracts for goods or services with a total value of \$50,000 or more.

Information Commissioner Gutierrez is also preparing to publish her *Report and Recommendations on the Implementation of the PATI Act*. This report will provide an opportunity for all stakeholders in public access to information across our community to consider how well the PATI Act has served the people of Bermuda. As our community adjusts to new norms in our social, business and personal lives, we also need to reflect on how public access to information is impacted and present in our daily lives.

Each PATI request made can remind public decision makers of the individual lives that are impacted when one choice is made over another. Each decision issued by the Information Commissioner protects, strengthens and reinforces Bermuda's PATI rights, ultimately ensuring its strong legacy. As our community evolves so should the infrastructure supporting Bermuda's PATI regime.

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“The purpose of information is not knowledge. It is being able to take the right action.”
– Peter F. Drucker,
author, consultant and
educator



DECISIONS ISSUED

During December 2020 and January 2021, the Information Commissioner received 5 new applications and issued 2 public decisions. Highlights from the decisions are below.

Does parliamentary privilege allow Parliament to decide what to publish about its proceedings? Read [Decision 17/2020](#) to find out.

The Information Commissioner, for the first time, issued a decision examining the parliamentary privilege exemption in section 36(b) of the PATI Act. In [Decision 17/2020](#), the Information Commissioner upheld an internal review decision of the Office of the Clerk of the Legislature (Legislature) which relied on the parliamentary privilege exemption to deny access to records relating to the work of the Parliamentary Joint Select Committee 'Examining the Events of the 2 December 2016 Incident at the House of Assembly'. Importantly, in [Decision 17/2020](#), the Information Commissioner explained the meaning, purpose and limits of the parliamentary privilege exemption. She explained that a key aspect of the constitutional doctrine of parliamentary privilege is each House's 'exclusive cognisance' of its own affairs. This means that each House has the right to manage its own affairs and to exercise sole jurisdiction over its own proceedings. The parliamentary privilege exemption in the PATI Act protects this exclusive cognisance by recognising that each House of Parliament has the right to control publication of its own proceedings.

The Information Commissioner emphasised, however, that this does not mean that all records held by the Legislature will automatically be exempt under the parliamentary privilege exemption in the PATI Act. The Information Commissioner also highlighted the extensive records that Parliament has published about the events of 2 December 2016. This includes the Joint Select Committee's 146-page report, published on Parliament's [website](#), with extensive annexes that include witness statements and other primary source documents.

To learn more about the Information Commissioner's explanation on the parliamentary privilege exemption, read [Decision 17/2020](#) available at [ico.bm](#).

Are you a requester who has not received a decision on your PATI request within the PATI timeframes? If so, read [Decision 01/2021](#) to learn what to do next.

The Information Commissioner's first decision of 2021 reminds public authorities of their duty to issue an internal review decision within 6 weeks of when a PATI requester asks for one. This is required under section 43(2) of the PATI Act for every internal review request that a public authority receives. In [Decision 01/2021](#), the Information Commissioner considered the failure of the Department of Public Lands and Buildings (Department) to issue a timely internal review decision on a PATI request for a copy of the Tudor Farm lease and tender records. The Information Commissioner has ordered the Department to issue an internal review decision by no later than 22 February 2021.

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DECISIONS ISSUED, *cont.*

The PATI Act ensures that requesters have the right to receive timely decisions on their PATI requests from public authorities. Failure-to-decide investigations and decisions, such as Decision 01/2021, are important because they demonstrate how the Information Commissioner continues to enforce the right of requesters. This should give the public confidence that their PATI requests will not go unprocessed.

Questions for members of the public: Did you submit a PATI request? If six weeks have passed since you made your PATI request, have you received an initial decision from that public authority? Did you ask for an internal review by the head of authority? If six weeks have passed since you asked for an internal review, have you received an internal review decision from the head of authority? Exercise your PATI rights to ensure that you receive the responses that you are entitled to under the PATI Act.

Question for information officers and heads of authorities: Does your public authority have any PATI requests that are unprocessed, requiring an initial decision or internal review decision?

ICO STATISTICS AS OF 31 JANUARY 2021

(from 1 April 2015)

Total applications for independent review	Closed: Decided	77
by the Information Commissioner	Closed: Resolved	17
155	Closed: Abandoned	7
Pending investigations	Closed: Invalid	20
34		
Applications pending validation		
0		

SAVE THE DATE

Information Commissioner's Virtual Quarterly Briefing

Monday, 8 March 2021

10:00am - 11:00am

Topic: Section 30 Operations of public authorities

ICO Briefings are for public authorities only.

Registration details will be sent directly to them.

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