

ANNUAL REPORT **2016**

Information
Commissioner's
Office





“A robust right of access is
crucial for individuals in a
modern democracy...”

GITANJALI S. GUTIERREZ
Information Commissioner



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WELCOME

Since the Public Access to Information (PATI) Act 2010 went into effect in 2015, the words “openness”, “transparency”, and “accountability” have been frequently invoked. Our country now faces the challenge, though, to understand what these words mean when put to the test in real life. Thousands of Bermudians, residents and employees of public authorities are just beginning to learn how the “right to know” works in their day-to-day lives.

This year the Information Commissioner’s Office (ICO) tackled the practicalities of overseeing how a PATI request plays out, starting with the steps an individual takes to make an initial PATI request, then the process a public authority uses to handle the request up through my decisions on reviews. We strove at each stage to ensure that my oversight will lead to a sound infrastructure that enshrines a robust right to access information as an essential democratic principle.

We described – through education programmes, public outreach, our inquiry services, ICO Guidances and Information Commissioner’s decisions – what the “right to know” means when it goes from a new right on paper to a right in real life.

I committed last year to a robust public education campaign. In this year’s report, we share our successes in providing education programmes across the island to diverse audiences. We reached thousands of people in discussions, during presentations, at meetings, through social media and on speaker panels. We explained to individuals that they may ask for emails, budgets, procurement papers, assessments, memos and various public records to help them with personal concerns involving a public authority, or to assist groups involved in public advocacy. Our Right to Know Week theme built upon these efforts with our successful “Just Ask!” campaign.

I also share for the first time the results of the ICO's annual survey of the public's awareness of their PATI rights and will continue to provide this data on an annual basis.

We have also talked with public authorities to help clarify how to navigate their obligations under various sections of the PATI Act. We published four new ICO Guidances that explain step-by-step what questions public authorities should consider when using certain exemptions to refuse a requester access to a record.

I also issued my first decision as Information Commissioner in January 2016. This and subsequent decisions assured applicants that I will safeguard and enforce the right to access records. My decisions also offer public authorities further guidance on the practicalities of handling a PATI request. When ICO investigators resolved cases that were eventually withdrawn, I also shared the lessons learned during the resolution process with the public authorities, highlighting areas for their improvement as well as our own. The role of the Information Commissioner is not to take sides, but to ensure that a proper balance is struck between transparency and the legitimate reasons to preserve confidentiality listed in the PATI Act.

As we came to the close of the second year of the PATI Act, we saw a steady number of PATI requests made to public authorities as well as a significant increase in the number of applications for review submitted to the Information Commissioner. I also received a growing number of complaints about noncompliance with the proactive publication requirements under the PATI Act, breaches of confidentiality, and other provisions of the PATI Act.

In the upcoming year, the ICO will focus on enforcement measures. You will see further published decisions from the Information Commissioner as the ICO works through our backlog of reviews. I am also consulting with local and overseas regulators to establish a more systematic process for oversight of the proactive publication requirements and other requirements of the PATI Act. Confidentiality concerns persist; I continue to call for amendments to the PATI Act that would allow individuals to ask for records anonymously. The work continues.

You may remember that last year's "annual" report covered only the first ten months of my appointment. This is my first report covering a full year of the Information Commissioner's work. I have introduced our new reporting format, which accommodates the two different reporting periods for two key sets of information.

First, the PATI Act requires all public authorities to report to the Information Commissioner the number of requests they have received and the progress on these requests. The public authorities include all departments of the Government of Bermuda, local governments, quangos and other authorities listed in the Schedule to the PATI Act. Their PATI statistics are reported on a calendar year: 1 January 2016 to 31 December 2016.

Second, the Annual Report is also my opportunity to share with Parliament and the public the progress the ICO has made on our performance measures for our fiscal year. Last year's report excluded the final quarter of the 2015 fiscal year. My report on our performance in this year's Annual Report spans two fiscal years to avoid a gap in our 2015 reporting. The last quarter of our 2015 fiscal year is included in this report along with our full 2016 fiscal year: 1 January 2016 to 31 March 2017.

You will see reminders throughout the Annual Report of these two different reporting periods. In future Annual Reports, I will continue to report on the statutory statistics of the calendar year (1 January to 31 December) and on the ICO's performance in the fiscal year (1 April to 31 March).

The work of the ICO continues to build on the foundations and infrastructure that we began creating in 2015. As a newly established independent Office charged with introducing and enforcing a new right, the challenges we have faced have been great – certainly greater than anyone could have anticipated. Yet, the Officers in the ICO continually rise to meet these challenges head on with dedication, integrity and intellectual ferocity. I am grateful for their commitment to safeguarding the rights afforded by the PATI Act and for their contributions to the establishment of the new Information Commissioner's Office. A special thank you to Tiffany Paynter, our relief education assistant, for her invaluable work this year to support the ICO's ambitious education programmes.

I recognise that the right to know is crucial for the ability of the public to understand how public bodies make decisions, to keep track of how public money is spent and to contribute to the democratic process. In the upcoming year, we will continue strengthening the infrastructure—internal and external to our Office—required to effectively uphold the rights under the PATI Act.

GITANJALI S. GUTIERREZ

Information Commissioner



MANDATE

The Office of the Information Commissioner was established as a public office by the Public Access to Information (PATI) Act 2010. The mandate of the Information Commissioner is to promote public access to information and oversee compliance with the obligations created by the PATI Act.

The Information Commissioner meets her mandate by:

- Engaging in education and outreach to raise the public's awareness of their rights under the Act and how to use them;
- Providing general guidance to public authorities about their responsibilities under the Act and exercising oversight of their compliance; and
- Hearing, investigating and deciding applications for review of public authorities' decisions on requests for records and other decisions made under the PATI Act.

The PATI Act requires public authorities' compliance with the Information Commissioner's reviews. When conducting her reviews, the Information Commissioner has robust authority to investigate, including examining any record withheld in response to a PATI request or to which the Act applies. The Information Commissioner's decisions on the reviews are also legally enforceable by the Information Commissioner, including any order to provide access to a record.

The Information Commissioner carries out her mandate guided by principles of independence, integrity and fairness.

In the exercise of her functions, the Information Commissioner shall not be subject to the direction or control of any other person or authority. The Information Commissioner's decisions are subject to judicial review by the Supreme Court upon the application of any aggrieved party. The accounts of the Office of the Information Commissioner are audited by the Auditor General annually. So while independent in her decision making and functions, the Information Commissioner is also accountable to similarly independent authorities, ensuring that the Information Commissioner remains free from political influence.

MISSION

The Mission of the Information Commissioner's Office is to work for all of the people of Bermuda to ensure full access to public records within the provisions of the PATI Act. Our mission supports the Information Commissioner's mandate.

The Information Commissioner's Office seeks to achieve a number of objectives each year:

- Promote positive cultural changes within the public and public authorities in response to the new rights created by the PATI Act;
- Promote the effective and responsible use of PATI rights through public awareness and education for the public;
- Encourage and enable public authorities to develop and achieve best practices in their PATI Act policies, procedures and practices through a combination of oversight, advice and assistance;
- Conduct fair, just and expeditious reviews of applications (appeals) made to the Information Commissioner that result in settlement or legally enforceable decisions;
- Influence and support the development of Bermuda's information law and policy to ensure the effectiveness of the PATI Act regime as well as comment on its interaction with other laws; and
- Act independently of the Government for all areas covering our statutory mandate and continually strengthen our Office's independent functioning.

The Mission of the Information Commissioner's Office is to work for all of the people of Bermuda to ensure full access to public records within the provisions of the PATI Act.



2016

JANUARY

Information Commissioner issues first decision

FEBRUARY

Information Commissioner joins panel on Information Security: Public Access on One Hand and Privacy and Data Protection on the Other sponsored by Information Systems Audit and Control Association (ISACA)

MARCH

ICO issues first 'annual' report for first ten months of operations

APRIL

Information Commissioner and Assistant Information Commissioner attend mediation training at the Cayman Islands Information Commissioner's Office by the Canadian International Institute of Applied Negotiation

MAY

Information Commissioner's presentation on Public Access to Information to the St. George's Rotary Club

JUNE

ICO Review Policy & Handbook: Reviews conducted under Part 6 of the PATI Act published

JULY

Staff training on records management basics

AUGUST

Staff training on privacy and data protection

OUR TEAM

GITANJALI S.GUTIERREZ

Information Commissioner for Bermuda

TIKITA SUHARTONO

Office Manager

JASON D. OUTERBRIDGE

Assistant Information Commissioner

ANSWER STYANNES

Investigation Officer



2017

SEPTEMBER

Right to Know Week events

ICO Guidance: Health or safety of individual exemption (section 22) published

ICO Guidance: Commercial information exemptions (section 25) published

ICO Guidance: Information received in confidence exemptions (section 26) published

OCTOBER

Answer Styannes joins the ICO as an Investigation Officer

NOVEMBER

ICO Guidance: Disclosure prohibited by other legislation exemption (section 37) published

DECEMBER

Staff attend U.K. Practitioner's Certification Training in Freedom of Information

Information Commissioner attends Open Government Partnership Global Conference

JANUARY

Information Commissioner presents 3-part series for Centre on Philanthropy: The PATI Act – a New Tool for Non-Profit Advocacy

Information Commissioner provides first presentation to a Parent-Teacher Association at West Pembroke Primary

FEBRUARY

Information Commissioner offers presentations to the Chamber of Commerce and to the Media Council

MARCH

Information Commissioner attends Transparency for the 21st Century Conference in Ottawa, Canada, sponsored by the Canadian Information Commissioner

ICO-sponsored training for public authorities – The Fundamentals of Investigation by Gareth Jones of the Workplace Institute



WHAT WE DO

Strengthening the Right: Raising Awareness

(1 JANUARY 2016 - 31 MARCH 2017)

EDUCATION PROGRAMMES

The Information Commissioner’s Office provided education programmes that reached communities across Bermuda and individuals of all ages, with a particular focus on youth and individuals aged 18-35. The decision to focus on this segment of the population was based upon the results of the March 2016 annual public awareness survey, discussed on page 11. Our survey showed that awareness of the PATI Act was lowest among persons aged 18-35. We recognise that the future of our country lies with our young people and have made a special effort to reach this group.

20 JAN	21 JAN	4 FEB	25 FEB	19 APR	9 MAY	27 JUN	8 SEP	19 OCT	20 OCT
PATI Act Briefing for the Bermuda Bar Association	PATI Presentation for the Devonshire Parish Council Annual Community Meeting	PATI Presentation for the Pembroke Rotary Club	Panel Discussion - Information Security: Public Access on One Hand and Privacy and Data Protection on the Other, sponsored by ISACA	PATI Presentation for Paget Parish Council Annual General Meeting	PATI Presentation for St. George’s Rotary Club	Introduction to the ICO & PATI Governance Issues for the BMA Board of Directors	PATI Act Updates for the Pembroke Rotary Club	PATI Act and Commercial Information for the Bermuda Bar Association	PATI Act Presentation to Age Concern’s Foundation of Civility Seminar

Our education programmes included presentations to the Youth Parliament on the PATI Act as well as to Warwick Academy's International Baccalaureate students on 'The Right to Know'. For the first time, the Information Commissioner also made presentations to the West Pembroke and St. David's Primary PTAs about using PATI rights to advocate for education and children.

Other education programmes included a presentation by Assistant Information Commissioner Jason Outerbridge about PATI rights to members of Age Concern during their Foundation of Civility seminar. Additionally, the Information Commissioner was the guest speaker for the 2016 Annual General Meetings for the Devonshire Parish Council and the Paget Parish Council. The Pembroke, St. Georges and Sandys Rotary Clubs each

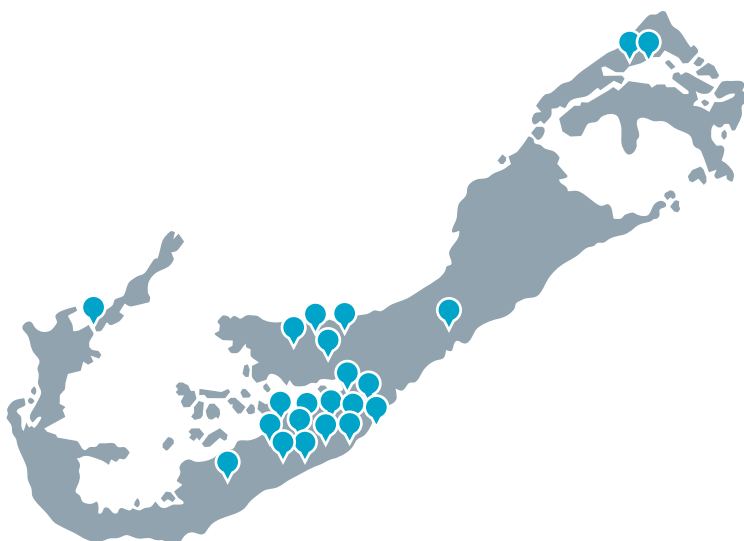
hosted talks by the Information Commissioner. The Information Commissioner also offered presentations and participated on panels with numerous professional associations, including the Bermuda Bar Association, the Media Council and the Chamber of Commerce.

The Information Commissioner also worked with the Centre for Philanthropy to offer a new 3-part series of workshops on *The PATI Act: A New Tool for Nonprofit Advocacy* that was attended by representatives from a diverse group of charities.

In total, from 1 January 2016 to 31 March 2017, the Information Commissioner's Office participated in twenty-two education programmes, outside of Right to Know Week, which reached over 580 individuals.



of the evaluations rated our education programmes as good to excellent



16 NOV

PATI Act Presentation to Sandys Rotary Club

14 DEC

Right to Know Presentation for Warwick Academy's Information Matters Programme

17 JAN

PATI Act Information Session for the West Pembroke PTA Meeting

18 JAN

PATI Act for Youth Parliament

18 & 25 JAN AND 1 FEB

The PATI Act: A New Tool for Nonprofit Advocacy – a 3-part series for the Centre on Philanthropy

27 JAN

PATI Act Presentation for the KPMG Management Mixer

2 FEB

How the PATI Act Can Affect Your Business, sponsored with the Chamber of Commerce

7 FEB

PATI Act Information Session for St. David's Primary PTA

8 FEB

PATI Act Presentation for the Media Council

29 MAR

PATI, PIPA and Cyber Security Panel sponsored by KPMG and the Bermuda Institute of Directors

WHAT WE DO

ONLINE AND SOCIAL MEDIA OUTREACH

The ICO website continues to be a valuable resource for the public and public authorities to learn about the PATI Act. We had 3,586 users visit our website for 6,271 sessions during this reporting period. Importantly, the average duration of their session rose from 21 seconds in 2015 to 2:14 minutes – more than six times the length of time spent last period. Our listing of public authorities, their Information Statements and their contact information is updated on a regular basis. The information available on our website provides potential requesters with the tools they need to make a PATI request or otherwise exercise their rights under the PATI Act. Our website also contains ICO Guidances and other information which serves as a helpful resource for public authorities.

In addition to our other social media outreach for Right to Know Week, discussed below, our Facebook page alone reached over 21,000 people during the course of this reporting period.

International Right to Know Day was established on 28 September 2002 by advocates around the world to mark the creation of the Freedom of Information Advocates Network. Since then, Information Commissioners, civil society groups, advocates, the media and public bodies celebrate the right to access information and the principles of openness, accountability, and transparency.

INTERNATIONAL RIGHT TO KNOW DAY 28 SEPTEMBER 2016

This year, the Information Commissioner's Office commemorated International Right to Know Day with a week-long series of activities on the theme of "Just Ask!". This message of encouragement to use the rights under the PATI Act and "Just Ask!" was spread across the Island. In addition to a robust radio campaign, we initiated our first video promotion that was viewed over 5,000 times. Outlets included movie theatres, the Transportation Control Department (TCD), the Immigration Department, Lindo's and Facebook. We also hosted a series of four information booths in Washington Mall and spoke to 170 individuals about the work that we do and their rights under the PATI Act. We received invaluable feedback about what is, and is not, working with the PATI process from the perspective of requesters.

The Information Commissioner also conducted a number of interviews during the week, including with the Bermudian.com and Todayinbermuda.com. In an effort to target more young people, the Information Commissioner also worked with Bermemes to launch their very first Facebook Live event with Qian Dickinson, which received over 3,900 views. The Information Commissioner's editorial, *Why PATI holds the key to meaningful debate*, ran in the Royal Gazette on September 28 for International Right to Know Day. During September 2016, our Facebook page reached 55,722 people.

Our capstone event was a community panel discussion held on 28 September 2016 at Bermuda College: *Just Ask! Looking Back & Looking Ahead at Our Right to Know*. Our panelists included Jeremy Deacon (Take Back our Park), LaKai Dill (Ombudsman Office), Theo Wolffe (Bermuda Youth Premier), Sara Clifford (Human Rights Commission) and Kai Musson (Human Rights Commissioner and an associate at Taylors in association with Walkers).

WHAT WE DO

Mr. Deacon and Ms. Dill discussed the challenges the public faced prior to the PATI Act when it was far more difficult for individuals to obtain information to help them understand why public authorities took certain actions. Ms. Dill, in particular, emphasised that prior to the PATI Act, the Ombudsman Office spent considerable efforts helping people get information. Mr. Deacon and the panelists from the Human Rights Commission went on to discuss how the new tools under the PATI Act have impacted their work by allowing advocates and individuals to have more accurate information when dealing with public entities. Finally, Youth Premier Wolffe addressed current young leaders' views about the routine nature, and importance, of having information from public bodies.

PUBLIC AWARENESS

The ICO commissioned a survey which was completed by Global Research at the end of the ICO's first fiscal year in March 2016 to gauge the public's awareness of their rights under the PATI Act. We will continue to commission an annual survey to measure the

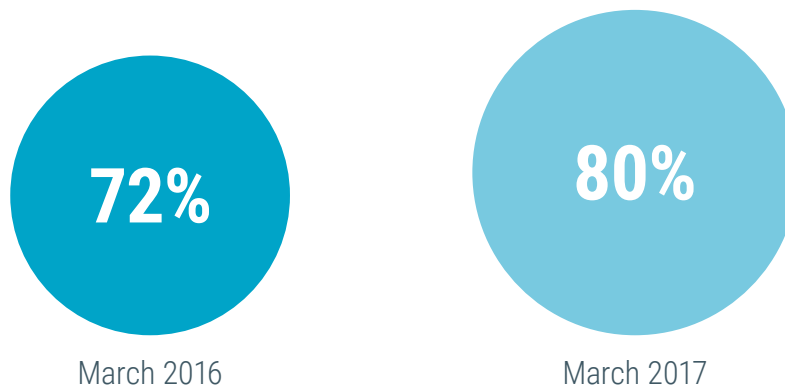
effectiveness of our education programmes. Our annual survey also helps us decide where to target our outreach and other work in the upcoming year.

A comparison of the March 2016 and March 2017 surveys found that:

- The number of residents who have heard of the PATI Act rose from 72% in March 2016 to 80% in March 2017
- Over half of our residents continue to think that the PATI Act would be useful to them: 53% in March 2016 and 54% in March 2017
- Residents were more likely to have heard of the Information Commissioner's Office, increasing from 37% in 2016 to 42% in 2017
- Of concern, residents were less likely to believe that public authorities will become more open and accountable as a result of the PATI Act, 76% in 2016 versus 59% in 2017

The full annual surveys and results are available on our website, www.ico.bm.

RESIDENTS WHO HAVE HEARD OF THE PATI ACT



WHAT WE DO

Strengthening the Right: Providing Guidance

(1 JANUARY 2016 - 31 MARCH 2017)

ICO GUIDANCES

Since 2015, the Information Commissioner has been developing an ICO Guidance series on exemptions and key provisions of the PATI Act. Our Guidances assist public authorities' understanding of how to meet their obligations under the PATI Act. Last year, we published five new Guidances. In this reporting period we have added four new ICO Guidances, all available on our website:

Health or safety of individuals: section 22 (September 2016)

Commercial information: section 25 (September 2016)

Information Received in confidence: section 26
(September 2016)

Disclosure prohibited by other legislation: section 37
(November 2016)

Strengthening the Right: Inquiries

(1 JANUARY 2016 - 31 MARCH 2017)

We regularly respond to inquiries from the public or public authorities about how the PATI Act works. This reporting period, we logged 182 emails, phone calls and visitors asking a wide range of questions.

Sometimes the inquiry was simply a potential PATI requester wanting to know where to send a PATI request or the name of the Information Officer for a particular public authority. Other times we answered more difficult questions from a requester or a public authority about how certain exemptions in the PATI Act work.

The ICO cannot give advice to public authorities or current PATI requesters on how to deal with specific PATI requests. For those types of questions, we refer inquirers to their own internal resources. For example, we suggest that Government of Bermuda departments contact the Policy and Strategy Section for internal support. This is because if the requester is dissatisfied with the handling of their PATI request, they may ultimately come to the Information Commissioner for an independent review. Nevertheless, the ICO can always provide guidance.



Individuals and public authorities can contact the ICO with questions about the PATI Act at 294-9181 or info@ico.bm

WHAT WE DO

Enforcing the Rights: Reviews and Decisions

(1 JANUARY 2016 - 31 DECEMBER 2016)

INDEPENDENT REVIEW BY THE INFORMATION COMMISSIONER

A key component of access to information laws around the world is having an independent review of the decisions made by public authorities. The PATI Act creates a right to have a review conducted by the Information Commissioner. When we receive an application for a review, it may progress through four stages: validation, early resolution, investigation and decision.

Applications are usually closed when the Information Commissioner issues a legally binding decision. Some applications are also closed for other reasons. This includes closing an application because it is invalid, has been resolved, or has been abandoned or withdrawn without resolution for the applicant's own reasons.

Invalid Applications

When we receive an application for a review, we first validate it to ensure that it meets the requirements for the Information Commissioner to take action and that we understand what issues the Applicant is raising.

The PATI Act sets out minimum requirements that a written application must meet before the Information Commissioner can conduct a review. The applicant must have asked the public authority for an internal review. They must also have either received an internal review decision or the six week deadline for it must have passed.

The internal review step is an important part of the process under the PATI Act. It provides public authorities with an opportunity to take a fresh look at the request. Often, a head of an authority may provide access to additional records during an internal review decision.

When an application is invalid, we explain to the applicant why it is invalid and offer guidance, when possible, to help the applicant make a new, valid application.

Applications Closed In Early Stages

After being validated, a few applications will be closed in the initial stages through early resolution. Occasionally, we have applications that are abandoned and closed during the early stages.

Resolution During Investigation

Most reviews will progress to an investigation. During the investigation, the PATI Act gives the Information Commissioner the authority to review the withheld materials and require submissions from public authorities.

Resolution without a decision may still happen during this stage. Resolution occurs when we work with the parties to settle the case to the Applicant's satisfaction, often by the public authority providing the records to the Applicant. We will ensure that the rights under the PATI Act are upheld during any resolution process. When this occurs, the Applicant may ask the Information Commissioner to accept a withdrawal of the application. If the Information Commissioner determines that a decision on the case would not provide helpful information for other public authorities or the public, she will accept the applicant's request to withdraw the application for review and close the case.

Decision

The majority of reviews will result in a decision. The Information Commissioner's decisions are legally binding to ensure enforcement of the rights under the PATI Act. When any aggrieved party disagrees with a decision by the Information Commissioner, they may seek judicial review by filing an application in the Supreme Court.

For further information about the Information Commissioner's reviews, please have a look at our Reviews Policy and Handbook (June 2016). This Handbook details the steps we will take during our reviews. It is written to help us ensure consistency and fairness in our approach to conducting reviews. We published our Handbook on our website to help the public and public authorities understand our decision making process.

WHAT WE DO

THE INFORMATION COMMISSIONER'S DECISIONS

Both public authorities and the public should expect that most applications for review will result in legally binding decisions by the Information Commissioner. Every decision is published on our website. The Information Commissioner's public decisions are important for several reasons.

First, the right to access a record is a right that belongs to the public, not just the individual requester. A decision by the Information Commissioner can inform the public about what records people are asking for and whether or not those records were released. If the Information Commissioner orders that a public record be released, anyone can get a copy of it unless it is the requester's own personal information.

Second, the public and public authorities can learn more about how the PATI Act works from the Information Commissioner's decisions. The decisions clarify how exemptions should be applied in particular situations. Decisions may also explain the requirements for a reasonable search for responsive records, how a public authority has a duty to assist requesters and other aspects of the PATI Act in practice.

The Information Commissioner's Approach

The Information Commissioner's decisions explain the background on the case, set out the Information Commissioner's findings and decision, and outline any action the public authority must take. In many cases, the public authority will address any concerns during the course of the review. When this occurs, the Information Commissioner's decision acknowledges it and thanks the public authority for the steps it has taken to comply with the PATI Act.

Decisions On 'Failure to Decide' Cases

The first decisions by the Information Commissioner addressed 'failure to decide,' or 'FTD,' cases. In these cases a public authority failed to decide a request for an internal review and, sometimes, failed to provide an initial response to a PATI request. To ensure that a PATI request is not overlooked or ignored, the ICO addresses these cases with FTD decisions.

The ICO notifies the public authority that an application has been made to the Information Commissioner because the PATI requester did not receive a decision. In many cases, the public authority will issue a decision to the requester during our investigation. When this does not occur, the Information Commissioner will order the public authority to respond to the PATI requester.

In issuing FTD decisions, the ICO has emphasised from the outset that the rights under the PATI Act are legally enforceable. Failing to respond not only deprives a requester of a decision on their PATI request but it also means that a requester may not be notified of their right to appeal. Our FTD investigations and decisions help to promote the public's confidence in the strengths of their rights under the PATI Act.

WHAT WE DO

OUR 2016 APPLICATIONS FOR REVIEW

In 2016, our Office received 32 new applications for an independent review by the Information Commissioner. This reflected a 290% increase in applications from the first year of the PATI Act, which is not surprising because of the time it initially took in 2015 for requests to work through the process within the public authorities.

Reasons People Asked For A Review By The Information Commissioner

Applicants ask for a review when they are unhappy with how the public authority handled their PATI request. It may be because they were denied access to the records they requested. Applicants may also challenge whether the public authority's search for the records was reasonable, or whether the public authority assisted them with their request.

One application for review may raise a number of different issues.

In 2016, half of the challenges to public authorities' reliance on exemptions involved the exemptions for commercial information and for information received in confidence.

We also saw a significant increase in the number of applicants who raised challenges to administrative denials of their PATI requests. The administrative denials include cases when the public authority could not find the record, the record did not exist, or the public authority found that processing the request would create a substantial and unreasonable interference with its day-to-day operations.

Challenges Raised In Valid Applications		2015	2016
Exemptions			
s.22	Health or safety	1	0
s.23	Personal information	2	3
s.25	Commercial information	2	4
s.26	Information received in confidence	1	9
s.27	Cabinet document	1	0
s.28	Ministerial responsibility	0	2
s.29	Deliberations of public authority	1	2
s.30	Operations of public authorities	2	3
s.35	Legal professional privilege	0	1
s.37	Disclosure prohibited by other legislation	0	2
Exemptions Subtotal		10	26
Administrative Denials and Other Issues			
	Failure to decide	3	9
	Administrative denial	1	10
	Fees charged	0	0
	Reasonableness of search	4	10
	Other (e.g., manner access is given, insufficient assistance given, etc.)	0	6

For a more detailed listing of the issues raised in the applications, please visit our website, www.ico.bm.

WHAT WE DO

During 2016, we also had 7 reviews carry over from 2015 as open cases, bringing our total number of open cases in 2016 to 39. Of these 39 open cases, we closed 10 cases as of December 2016 and the remaining 29 cases were carried forward into 2017.

Our Outcomes	2015	2016
Applications brought forward from previous year	0	7
New applications for review	11	32
Total caseload	11	39

Of the 32 new applications received by our Office, two were invalid because the applicants had not yet sought an internal review from the public authority. Their applications for an independent review by the Information Commissioner were submitted too soon. In both cases, we provided the applicant with information on how to ask the public authority for an internal review.

Applications Closed In Early Stages	2015	2016
Reason for Closure		
Invalid	3	2
Early resolution	0	0
Abandoned/Withdrawn	0	1
Subtotal	3	3

Proportions Of New Valid Applications	2015	%	2016	%
Valid	0	73	30	94
Invalid	11	27	2	6
Total	11	100	32	100

WHAT WE DO

APPLICATIONS CLOSED DURING INVESTIGATION

If a review is resolved to the applicant's satisfaction during an investigation, the Information Commissioner may accept the applicant's withdrawal of the application.

Applications Closed During Investigation	2015	2016
Reason for Closure		
Resolved	1	1
Abandoned/Withdrawn (other)	0	1
Subtotal	1	2

Decisions	2015	2016
Decision Outcome		
For requester	0	5
For public authority	0	0
Partially upheld	0	0
Subtotal	0	5

WHAT WE DO

The majority of the reviews will close with a decision by the Information Commissioner. The decisions explain the Information Commissioner's reasoning and findings. A decision is legally binding and subject to judicial review by an application to the Supreme Court. For more information about the Information Commissioner's decisions, see page 14.

The Information Commissioner's first decision was issued in January 2016 and was followed by an additional four decisions. All decisions issued in 2016 addressed the Applicant's concern that the public authority had not responded to their PATI request within the statutory timeframes (Failure to Decide cases). The issues were whether the public authority had, in some cases, failed to provide an initial decision on the PATI request within the statutory timeframes and in all cases whether the public authority had failed to issue an internal review decision in time.



All of the Information Commissioner's decisions are available on our website, www.ico.bm.

In all but one case, the public authority issued an internal review decision during the course of the review. In Decision 02/2016 *Judicial Department*, the Information Commissioner issued an order with the Decision requiring the public authority to produce an internal review decision.

Once the public authority's internal review decision is received, applicants must decide if they agree with it. In three of the five 2016 cases, applicants made a subsequent request for the Information Commissioner to review the public authority's

internal review decision. Two of the applicants were satisfied with the public authority's decision once they received it.

The FTD decisions reflect the public authority's learning process about the day-to-day requirements of the new PATI regulatory regime. In Decision 04/2016 *Bermuda Medical Council*, for example, the board only met quarterly and the request for an internal review was presented to the chairperson of the board during one of the quarterly meetings. The chair ultimately issued an internal review decision, which the applicant did not challenge because they were satisfied when the chairperson determined that further records could be disclosed.

The delay in waiting to give the request to the chairperson, though, resulted in an internal review decision issued outside the required timeframe and during the course of the Information Commissioner's review. In Decision 04/2016, the Information Commissioner clarified that the public authority's receipt of the request for an internal review begins the six week time frame. Public authorities have a responsibility to ensure that the request is communicated in a timely manner to the head of the authority to make the internal review decision.

In Decision 03/2016 *Ministry of Education*, the public authority sent some records to the applicant without explanation a few days after the internal review decision was due. Some confusion resulted because the public authority did not give the applicant notice of the decision, including the reasons for it and the rights to appeal to the Information Commissioner. In Decision 03/2016, the Information Commissioner affirmed that the PATI Act requires the head of the authority to notify the applicant of: the internal review decision, the reasoning for the decision and the right to seek an independent review. During the course of this review, the Ministry of Education provided the applicant with an internal review decision. The Information Commissioner thanked the Ministry of Education for its cooperation during the review.

WHAT WE DO

Cumulative Caseload (as of 31 December 2016)	2015	2016
Total cases closed	4	10
Total cases carried forward to next year	7	29

Our total cumulative caseload was 43 applications for review as of 31 December 2016.

Cumulative Total Applications (as of 31 December 2016)	TOTAL
Cases closed in 2015	4
2015 cases carried over and closed in 2016	3
Cases received and closed in 2016	7
2015 cases carried over and still open as of 31 December 2016	4
Cases received in 2016 and still open as of 31 December 2016	25
Cumulative total applications (as of 31 December 2016)	43

DECISIONS TAKEN TO THE JUDICIAL REVIEW

None of the Information Commissioner's 2016 decisions have been taken to judicial review as of 31 December 2016.

WHAT WE DO

Enforcing The Right: Compliance Oversight

In addition to conducting reviews of public authorities' decisions on PATI requests, the Information Commissioner's Office engages in oversight of compliance with other requirements under the PATI Act. These other requirements include safeguarding a requester's confidentiality, designating an Information Officer, ensuring an up-to-date and accurate Information Statement and routinely publishing certain information as described in Part 2 of the PATI Act.

We saw an increase in 2016 of complaints from individuals about a number of these issues, often arising out of the individual's need for information to file a PATI request in the first place or the requirements in Part 2 of the PATI Act for public authorities to routinely publish certain information. In many instances, the public authority will quickly bring itself into compliance after we contact it. This is particularly the case when an Information Officer is not in place, or we have identified an Information Statement that requires updating.

In other instances, we have received complaints that involve more complex questions. This might include, for example, a public employee's concern about retaliation for making a PATI request, numerous reports of breaches of a PATI requester's confidentiality or the refusal to accept an emailed PATI request as a written request. We also received complaints for the first time this year that public authorities are not publishing their contracts with a value of \$50,000 or more, as required by section 6(6) of the PATI Act.

The current resources of the ICO limit our ability to respond adequately to each complaint at this time. We are looking at ways to address these compliance requirements proactively with every public authority on an annual basis rather than only responding to complaints about individual public authorities.

2016 PUBLIC AUTHORITIES' STATISTICS

(1 JANUARY 2016 - 31 DECEMBER 2016)

The PATI Act requires public authorities to report their annual statistics to the Information Commissioner for publication. This Annual Report also includes updated 2015 statistics, which include public authorities' activities from 1 April to 31 December 2015.

2016 Public Authorities' Statistics	Number	Percentage Of Total Number
Number of public authorities that received requests	54	25.4%
Number of public authorities that did not receive any requests	135	63.4%
Number of public authorities with no statistical information provided	24	11.2%
Total number of public authorities	213	100%

Total PATI Requests	2015	2016
Reported new requests	124	144
Reported requests carried over from prior year	N/A	24
Total requests in processing for year	124	168

The total number of new reported requests was 144 for 2016. The public authorities with the highest number of new 2016 requests reported to the ICO were the Bermuda Police Services (30), Ministry of Finance Headquarters (8), Customs Department (8), Bermuda College Board of Governors (6), Health Department (6) and Department of Immigration (5).

The Government of Bermuda Ministry with the highest number of reported requests (excluding Bermuda Police Services) was the Ministry of Finance, with 18 requests received by its departments.

2016 PUBLIC AUTHORITIES' STATISTICS

(1 JANUARY 2016 - 31 DECEMBER 2016)

Individuals made 142 new PATI requests for access to records under section 13 of the PATI Act. Another 23 PATI requests for records were reported as pending at the end of 2015.

PATI Requests Made (s.13)	2015	2016
Total number	123	142

The reported outcomes of these requests are listed in the table below.

Initial Disposition Of PATI Requests (as at year end)	2015	2016
Pending	23	9
Access granted in whole	45	64
Access granted in part	17	27
Access refused in whole	30	54
Unknown	8	11

In 2016, public authorities reported receiving 2 new requests under section 19 of the PATI Act to amend a record of personal information.

Requests To Amend Record Of Personal Information In Record (s. 19)	2015	2016
Total number	1	2

The outcome of the requests to amend a record of personal information are outlined in the table below:

Disposition Of Requests To Amend Personal Information In Record	2015	2016
Pending	1	0
Request granted	0	1
Request denied	0	2

2016 PUBLIC AUTHORITIES' STATISTICS

(1 JANUARY 2016 - 31 DECEMBER 2016)

Public authorities are required to report on the number of times they invoke exemptions to deny access to records in the initial response to the PATI request for access to records. Their reports also include the number of administrative denials they issued. In 2016, the reports indicated a significant increase in the number of administrative denials issued.

Reasons For Refusal In Initial Decision	2015	2016
Administrative refusal because record does not exist or cannot be found - section 16(1)(a)	18	32
Administrative refusal because insufficient information in request - section 16(1)(b)	3	1
Administrative refusal because request would cause substantial and unreasonable interference or disruption - section 16(1)(c)	0	6
Administrative refusal because publication of information is required by law within 3 months – section 16(1)(d)	2	1
Administrative refusal because information is already in public domain - section 16(1)(f)	5	3
Administrative refusal because fee payable under section 20 not paid - section 16(1)(g)	0	1
Health or safety - section 22	2	0
Personal information - section 23	7	11
Commercial information - section 25	2	12
Information given in confidence - section 26	6	12
Cabinet document - section 27	0	1
Ministerial responsibility - section 28	0	4
Deliberations of public authorities - section 29	2	6
Operations of public authorities - section 30	4	10
National security, defence and international relations - section 32	0	2
Law enforcement - section 34	5	3
Legal professional privilege - section 35	2	2
Disclosure prohibited by other legislation - section 37	2	3
Non-disclosure of existence of a record - section 38	1	2
Failure to decide	0	2

2016 PUBLIC AUTHORITIES' STATISTICS

(1 JANUARY 2016 - 31 DECEMBER 2016)

Public authorities reported that individuals sought internal reviews 32 times in 2016. The decisions in the internal reviews varied, as shown below.

Dispositions Of Internal Reviews	2015	2016
Pending	2	3
Grant access in whole	2	2
Grant access in part	0	4
Refuse in whole*	9	18
Procedural issues**	0	2
Referred to Commissioner	0	3
Total reported internal review decisions	13	32

* Failure to issue a timely internal review decision deemed a refusal in whole.

** Includes issues such as failure to comply with timeframes.

The internal review decisions that denied access to records also relied more heavily in 2016 on administrative denial grounds:

Reasons For Refusal In Internal Review Decision	2015	2016
Administrative refusal because record does not exist or cannot be found - section 16(1)(a)	1	4
Administrative refusal because request would cause substantial and unreasonable interference or disruption - section 16(1)(c)	0	5
Administrative refusal because publication of information is required by law within 3 months - section 16(1)(d)	0	1
Administrative refusal because information is already in public domain - section 16(1)(f)	1	0
Personal information - section 23	2	3
Commercial information - section 25	1	2
Information given in confidence - section 26	1	6
Cabinet document - section 27	1	0
Deliberations of public authorities - section 29	0	2
Operations of public authorities - section 30	2	3
Disclosure prohibited by other legislation - section 37	0	2
Failed to issue decision	0	6
Request for internal review out of time	0	1



DEVELOPING INFORMATION RIGHTS

We seek to ensure that Bermuda's development of information rights is consistent with the best practices and trends in the international community.

ANONYMOUS REQUESTS AND UNIVERSAL ACCESS

In the 2015 Annual Report, the Information Commissioner stated that the extension of the right to access information to only Bermudians and residents of Bermuda fell below international best practices and created a number of negative practical consequences. One of the most significant of those consequences is the inability to make a PATI request anonymously by using a pseudonym.

A public authority may voluntarily provide access to information to anyone. But to enforce rights under the PATI Act, requesters must always use their real names to confirm their eligibility as a Bermudian or Bermuda resident. This means that no one can file anonymously, the most effective way to ensure a PATI requester's confidentiality and protection from any negative impact of making a request.

This year, we received multiple complaints and concerns about potential breaches of a requester's confidentiality. One group of those complaints came from individuals who believed that their supervisor had learned about their PATI request and was directly or indirectly holding it against them. In other cases the requester was not worried, but had discovered that others knew about their PATI request. These individuals were not negatively

impacted by the potential breach of confidentiality, but wanted the ICO to know for the sake of future PATI requesters.

We will continue to document the need for an anonymous PATI request process and call for the PATI Act's extension to universal access.

PERSONAL INFORMATION PROTECTION ACT (PIPA)

The most significant local development for information rights this year was the passage of the Personal Information Protection Act (PIPA), which received Royal Assent on 27 July, 2016. We now have the two core foundations for a modern information rights framework: the right in the PATI Act to access to public records and the right in PIPA to privacy for your personal information. PIPA establishes the requirements placed upon all organisations – in both the public and private sectors – concerning the safeguarding and use of an individual's personal information. The Information Commissioner extends congratulations to the Government of Bermuda and the officers whose many years of work have culminated in the establishment of critical privacy protections.

Currently, the PATI Act creates rights to request your own or a third party's personal information. To protect from unjustified disclosure, the PATI Act creates an exemption preventing disclosure to a third party of any personal information in records held by public authority, subject to certain exceptions. It also creates the right to ask for your own personal information to be amended in a record held by a public authority if that information is incorrect, incomplete or misleading.

DEVELOPING INFORMATION RIGHTS

But PATI's protection for personal information in records held by public authorities has its limits; it is precisely these limits that PIPA addresses with comprehensive privacy legislation which reflects international best practices.

Most notably, the PATI Act only impacts records held by public authority. PIPA will apply to all organisations that use personal information, including the private sector. Among other things, this will allow PIPA to tackle the challenges of privacy in a digital world.

PIPA also incorporates distinct international privacy legislation frameworks that have been established in the context of personal information and data protection. These principles are complementary to, but different from, the principles driving access to information rights embodied in the PATI Act.

The Information Commissioner provided formal and informal consultation on the Model Draft Bill for PIPA. In the upcoming year, we will continue to provide consultation on the harmonisation that will be required between the provisions of PIPA and PATI related to requests to receive or to amend records held by public authorities containing personal information. To learn more about PIPA, please contact ictpolicy@gov.bm or call the Department of ICT Policy and Innovation at 441-294-2774.

ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ACCESS TO INFORMATION

From an international perspective, the most significant development this year was the decision by the European Court of Human Rights Grand Chamber in the *Case of Magyar Helsinki Bizottság (Hungarian Helsinki Committee) v Hungary* (App no. 18030/11) on 8 November 2016. For the first time, the European Court of Human Rights recognised that the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights includes a right to access information held by governments, under specific circumstances.

The Court first surveyed its own cases, the domestic laws of Council of Europe member states and the relevant international instruments to conclude that recognition has evolved that "a right to freedom of information" is an inherent element of "the freedom to receive and impart information enshrined in Article 10 of the Convention" under certain conditions. The right arises under Article 10 when "access to information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular 'the freedom to receive and impart information' and where its denial constitutes an interference with that right".

Article 10 is engaged when:

- The request is for the purpose of enabling the requester to exercise his or her freedom to receive and impart ideas and information to others, i.e. a prerequisite to journalism or public debate activities;
- The nature of the requested information must be relevant to a matter of public interest to society as a whole;
- The requester must be seeking access to information in its capacity as a "public watchdog," such as a journalist, non-governmental organisation, academic researcher, blogger and so on; and
- The information should be ready and available

The Court's decision reminds us that Bermuda's enactment of the PATI Act is consistent with international trends towards greater recognition of the right to access information. It also reminds us that this right is critical for engagement in public debate and accountability for public authorities.

Over time, jurisdictions will also determine the impact of Article 10's newly recognised right to information upon local freedom of expression rights (such as those enshrined in Article 9 of the Bermuda Constitution) and access to information laws (such as the PATI Act).



STRENGTHENING THE ORGANISATION

The Information Commissioner's Office made good strides in 2016 towards strengthening our organisation's framework and infrastructure and laying the groundwork for further progress in 2017.

Our most important asset remains the diligent and professional Officers who support the organisation. In 2016, the ICO benefited from a Relief Education Assistant and added an Investigation Officer, doubling our current staffing capacity.

Our Officers engaged in a number of training opportunities this year to further their development as well as the ICO's capacity. These included attending mediation training at the Cayman Islands Information Commissioner's Office by the Canadian International Institute of Applied Negotiation. The joint training with the Cayman Islands Information Commissioner also afforded an opportunity to build professional relationships with our overseas counterpart. Officers also attended two additional significant trainings – the UK-based PDP Practitioner's Certification Training in Freedom of Information as well as the Fundamentals of Investigation Training sponsored by the ICO. Throughout the year, the ICO team also participated in additional training to support our work, including: record management basics; privacy and data protection; data management and security; cyber risk and security; and presentation tools.

As a new independent office, our staff have participated in a number of initial trainings to strengthen our capacity. We had planned for an investigations training for our team in 2016. When we took a look at the cost for overseas training for our staff, we recognised that for a slightly higher investment, we could bring the overseas trainer here and offer a subsidized training for a larger group of public officers.

In March 2016, the ICO offered a two-and-a-half day course on the *Fundamentals of Investigation* by Gareth Jones of the Workplace Institute, attended by sixty-six public officers. The feedback for the course was excellent. In addition to strengthening the ICO's own capacity for conducting investigations, the training offered an opportunity for officers within the ICO and other public authorities to build our professional relationships.

"This provided a valuable framework for a sometimes daunting process." Course Participant

Information Commissioner Gutierrez also participated in two international conferences – the Open Government Partnership's Global Conference and the Transparency for the 21st Century Conference, sponsored by the Canadian Information Commissioner.

From the ICO's beginnings, a key aim has been to migrate onto our own information technologies (IT) system, which would include custom case management and records management software to support our work. This will strengthen the independence of our office, allow us to utilize technology to leverage our limited resources and reinforce the security of our information management.

The Information Commissioner's review process involves receiving the withheld records and confidential review submissions from all public authorities whose PATI decisions are challenged. These public authorities include quangos, statutory corporations, local governments and other authorities who do not use the Government of Bermuda IT systems.

The ICO recognises that we cannot hold the records or submissions of non-Government of Bermuda entities on the government servers and networks. During the last two years, we have relied upon a temporary system of hard copy files and offline computers for our case work. At the same time, we have been engaged in a project to identify and procure the most appropriate IT infrastructure for our office. This process resulted in the selection of a managed IT services provider, with our data stored in a local data centre. We anticipate completing this migration in 2017.

The ICO's 31 March 2015 Audited Financial Statement for the year ended 31 March 2015; 31 March 2016 Audited Financial Statements for the year ended 31 March 2016; salary scales; budget for the fiscal year ended 31 March 2015 and for the fiscal year ended 31 March 2016; and additional financial information are available on our website, www.ico.bm.



LOOKING AHEAD

In my upcoming year as Information Commissioner, I will be urging both public authorities and the public to consider information as one of the most powerful assets they hold. A public authority's choices about how it manages its information assets have a broad impact.

Like financial assets, the proper management of information has the capacity to enrich individuals, companies, public authorities and Bermuda. Similarly, the mismanagement of information has the capacity to cause detriment. It can lead to uninformed decision making, cause harm to individuals or organisations and leave the public unable to engage effectively in public discourse. Recognition is growing that information represents a valued asset deserving of proper management.

No one would ever expect the public to casually hand a public body a million dollar budget without proper financial management controls in place. Our history shows that we have engaged in the slow, steady process over the years to create the support and systems required to manage and monitor the spending of public dollars. This includes systems of internal and external controls and checks, proper accounting practices, financial accounting software and audits. This infrastructure supports effective and accountable public spending.

We need to adopt a mindset that the information assets held by a public authority are equally valuable and influential. Public authorities require a robust infrastructure to manage

public information assets responsibly and effectively. This includes critical proper records maintenance and management, effective practice codes, appropriate staffing to manage public information assets, training and internal support. I look forward to the ICO's work in the upcoming year to promote progress in these efforts.

As we enter the PATI Act's third year, I am also preparing to begin the review required by the Act of the first two years of its operations. I thank the Government of Bermuda for additional funding in 2017 to support this review.

A robust right of access is crucial for individuals in a modern democracy and the lives of generations to come. As we continue to develop these rights, it is clear that the PATI Act entering into effect on 1 April 2015 was a beginning, not an end. I remain committed to safeguarding these rights in a firm and impartial manner for the benefit of all. And I thank the brilliant and dedicated Officers who support the mandate of this Office, the staff of public authorities throughout Bermuda whose work makes the right to know possible and the members of the public who have stepped forward in these early years to transform PATI rights from paper ideas into rights in real life.

GITANJALI S. GUTIERREZ
Information Commissioner



It's your right to know.
Just Ask!

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