



Guidance

ICO Annual Return (Part 2 and section 58(3))

The ICO Annual Return

1. The Public Access to Information (PATI) Act 2010 strengthens the public's access to public information by requiring public authorities to make certain information available as a matter of course, without the need for a PATI request. The Information Commissioner is mandated to oversee and, where required, enforce compliance with these requirements.
2. Part 2 of the PATI Act requires public authorities to:
 - a. publish an up-to-date Information Statement,
 - b. maintain a PATI request log (without any information identifying requesters),
 - c. have quarterly expenditures readily available for the public, and
 - d. publish in the Official Gazette details of all of its contracts for goods or services with a total value of \$50,000 or more.
3. Section 58(3) of the PATI Act also requires public authorities to submit their PATI statistics to the Information Commissioner for inclusion in her Annual Report. These statistical reports consist of the number of:
 - a. PATI requests received and their disposition,
 - b. requests to amend records of personal information and their disposition,
 - c. times public authorities invoked each exemption in Part 4 of the PATI Act, and
 - d. applications for internal reviews and their disposition.
4. Sections 7(1)(b) and 8(1) of the PATI Act give the Information Commissioner the authority to monitor public authorities' compliance with Part 2 of the Act.
5. The ICO Annual Return allows the Information Commissioner to monitor public authorities' compliance with the PATI Act. It also enables the Information Commissioner to provide guidance, when needed, to a public authority to bring itself into compliance. If noncompliance persists, the Information Commissioner will use her statutory authority to enforce compliance.
6. The Information Commissioner also invites public authorities to share any steps they have taken to make their information more accessible to the public. This may include, for example, publishing additional information on a website, such as meeting minutes or registers of interests. A public authority may also publish details about its decisions or procedures. In her Annual Report, the Information Commissioner highlights public authorities' extra efforts to promote transparency, accountability and good governance.

7. Specifically, public authorities are required to provide the following information when completing the ICO Annual Return:
 - a. Annual statistics for all PATI requests received by the public authority between 1 January to 31 December (s. 58(3) of the PATI Act),
 - b. Confirmation that its Information Statement is complete and the public authority has conducted an annual review of it (ss. 5 and 7 of the PATI Act), and
 - c. Confirmation of the other proactive publication requirements, including the availability of a PATI request log, quarterly expenditures and the gazetting of details of contracts for goods or services with a total value of \$50,000 or more (ss. 6 and 8).
8. The ICO Annual Return period covers the calendar year, from 1 January to 31 December.
9. Public authorities may use the ICO Annual Return process as a helpful reminder to review their PATI requirements and address any outstanding items, such as the need to gazette qualifying contracts for the calendar year.

10. Note, though, that at a minimum, the Information Commissioner expects public authorities to report on the current status of their compliance with the PATI Act and identify any outstanding requirements. In the ICO Annual Return, the public authority must notify the Information Commissioner on when it expects to complete the requirements. For example, if a public authority has not gazetted its qualifying contracts for the calendar year, but expects to complete this requirement by 20 January in the following year, it must clearly state this. The Information Commissioner will monitor the public authority's compliance.

‘Proactive publication’ means that information is readily available to the public, without the need to make a PATI request.

11. Public authorities should read the instructions for the ICO Annual Return carefully. The ICO will highlight any changes to the Annual Return year over year.

Gazetting contracts for goods or services with a total value of \$50,000 or more

12. A public authority should take particular care when confirming its compliance with the obligation to gazette the details of qualifying contracts. Section 6(6) of the PATI Act requires contracts for goods or services with a total value of \$50,000 or more to be gazetted on a regular basis. Regular publishing will depend on the volume of contracts that a public authority engages in but, at a minimum, should be done annually.

13. The details of the contracts must include the:
 - a. name of the contractor,
 - b. monetary value of the contract,
 - c. goods and services to be provided under the contract, and
 - d. time for performance of the contract, e.g., the completion or delivery date.

Contracts without a specific date of delivery should be marked as 'ongoing', such as a contract for legal counsel for representation during legal proceedings.

14. If a public authority has a multi-year contract or a contract with an evergreen clause (i.e., a clause which allows an automatic extension of a contract without amendment), the public authority must publish the details of the contract when the total value of the contract is \$50,000 or more.
15. The Cabinet Office's [Public Access to Information: Administrative Code of Practice](#) (January 2020), pages 29-30 and 86, provides further details about gazetting information for qualifying contracts that have been in force since 1 April 2015.
16. Additional guidance is available from the Government of Bermuda Office of Project Management and Procurement's [Code of Practice for Project Management and Procurement](#) (July 2020). In particular, section 8 of the Code provides guidance on how to calculate the total value of a contract for goods or services.
17. When the value of a contract is in doubt, public authorities should document their efforts to determine the contract's total value. For example, a government department should retain its email correspondence with its Accounting Officer or Ministry Controller documenting its query about a contract's value and the response.

Savings for exempt information

18. Section 11 of the PATI Act explains that nothing in Part 2 of the PATI Act requires a public authority to publish or provide information that constitutes an exempt record. An exempt record is a record that falls within any of the exemption provisions in Part 4 of the PATI Act.
19. For example, if the Bermuda Police Service had a contract with an individual to provide services as an undercover officer, then contract details such as the name of the contractor and dates of the services may fall within one of the law enforcement exemptions in section 34 of the PATI Act. If that is the case, the Bermuda Police Service can notify the Information Commissioner in the ICO Annual Return of the number of contracts with details that are exempt and the applicable exemption.

Enforcement

20. The Information Commissioner takes a progressive approach to compliance and enforcement. Through the ICO Annual Return process, a public authority has an opportunity to explain the status of its efforts to bring itself into compliance with the requirements set out in Part 2 of the PATI Act.
21. The Information Commissioner will attempt to reach an agreement with the public authority on a reasonable timeframe to bring itself into compliance. The Information Commissioner will also provide appropriate guidance throughout.
22. If a public authority disagrees with the Information Commissioner or in the unlikely event that a public authority otherwise refuses to meet its obligations under Part 2 of the PATI Act, the Information Commissioner will use the full authority in sections 7(2) and 8(2) of the PATI Act to issue an order and enforce compliance.
23. Any order issued by the Information Commissioner under section 7(2) or 8(2) is legally binding upon the public authority and is enforceable in the same manner as an order of the Supreme Court, in accordance with section 9 of the PATI Act.
24. Finally, public authorities who fail to submit the ICO Annual Return will be listed in the Information Commissioner's Annual Report for that year.

More information

25. The December 2018 Information Commissioner's Quarterly Briefing provides an overview of the purposes and technical requirements of the ICO Annual Return process. It is available on the ICO's website, ico.bm.
26. The Cabinet Office's PATI Administrative Code of Practice is available on the Government of Bermuda website at gov.bm. If you need more information about the Code, please contact the Cabinet Office's PIPA/PATI Unit at pati@gov.bm.
27. If you need any more information about this ICO Guidance or have an inquiry about any other aspect of the PATI Act, or public access to information generally, please contact the ICO at 543-3700 or stats@ico.bm.

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