

# MONTHLY ROUNDUP

Volume IV, Issue 11

DECEMBER 2021

## WELCOME

The Information Commissioner's Office (ICO) welcomes you to the December 2021 issue of our Monthly Roundup. The ICO is an independent public office that promotes and enforces the Public Access to Information (PATI) Act 2010 in Bermuda.

The ICO's Monthly Roundup offers helpful information about PATI rights and practice for both the public and public authorities.

In this issue, we take a closer look at the Information Commissioner's recently issued decisions, her final ones that rounded out the ICO's work for 2021. Also, the 2022 Information Commissioner's Quarterly Briefings will kick off in March. If you are involved with PATI work for one of Bermuda's public authorities, speak to your public authority's Information Officer to ensure that you receive the invite to join the Commissioner's Quarterly Briefings.

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- Monthly statistics for ICO cases
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“Knowledge is power. Information is power. The secreting or hoarding of knowledge or information may be an act of tyranny camouflaged as humility.”

Robin Morgan,  
American poet,  
author, political  
theorist, activist,  
journalist and  
lecturer



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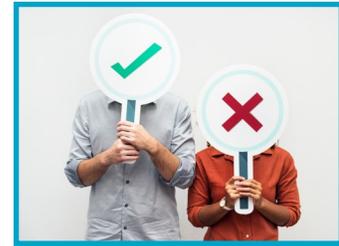


## DECISIONS ISSUED

During December, the Information Commissioner received 4 new applications and issued 7 decisions. Highlights are below.

**Are all records on Members of Parliament exempt under the parliamentary privilege exemption? Read Decision 20/2021 to learn more about parliamentary privilege and the PATI Act.**

In **Decision 20/2021**, the Information Commissioner considered a refusal by the Office of the Clerk of the Legislature (Office of the Clerk) of a PATI request for any record about complaints made against a certain Member of Parliament. The Information Commissioner found that the PATI Act does not apply to some of the records responsive to this PATI request, as they were created or obtained by a public authority listed in section 4(1)(b) in the course of carrying out their functions. The Information Commissioner upheld the Office of the Clerk's denial of public access to the remaining responsive records, because they are exempt either as personal information or due to parliamentary privilege.



**Decision 20/2021** is the Information Commissioner's second decision considering a public authority's reliance on the parliamentary privilege exemption in section 36(b) of the PATI Act. The Information Commissioner re-emphasises that the exemption is in place to protect a well-established constitutional principle of parliamentary privilege, under which each House of the Parliament has the right to manage its own affairs and to exercise sole jurisdiction over its proceedings. Parliamentary privilege includes Parliament's right to control publication of its own proceedings.

From a public access to information perspective, **Decision 20/2021** shows that, under the PATI Act, not all records relating to Parliament or Members of Parliament will be exempt automatically due to parliamentary privilege. For this exemption to apply, the records must relate to proceedings of Parliament. The Information Commissioner found in **Decision 20/2021** that the Office of the Clerk was not justified in withholding three responsive records under the exemption, because they do not relate to Parliament's proceedings. Nevertheless, the Information Commissioner did not require the Office of the Clerk to disclose any more records, because she was satisfied that they consist of personal information and that their disclosure is not in the public interest.

**Can a public authority transfer a PATI request to another public authority at any time during the PATI process? Read Decision 17/2021 to find out.**

If after completing the relevant checks, a public authority confirms that it does not hold records responsive to a PATI request but believes another authority might have them, the request should be transferred to that other authority. The statutory deadline to complete the

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## DECISIONS ISSUED...cont.

transfer is five working days from receiving the PATI request. Then, the six-week initial decision timeframe begins afresh when the new public authority receives the transfer.

The Information Commissioner looked into a case of a transferred PATI request in [Decision 17/2021](#). The PATI request asked the Ministry of Education Headquarters (Ministry) for records of a certain legal settlement, to which the Ministry responded that, while it did not hold any responsive record, another public authority held the records the requester wanted.

But, what should happen if the public authority does not realise until much later that the PATI request was not, but should have been, transferred at the right time? This was the situation seen in [Decision 17/2021](#). The Information Commissioner explained how the PATI Act assumes that all transfers will occur at the initial decision stage. No provision allows a public authority to reset the statutory timeframe on completing a transfer once the requester has asked for an internal review. Although a public authority may discover that it needs to transfer a request during an internal review, a transfer at this time will always be outside the statutory timeframe in the PATI Act.

To address this issue, the Information Commissioner has suggested that public authorities complete certain checks when first receiving an internal review request, similar to what is already expected at the initial decision stage. Doing so would position the public authority to fulfil its duty within an otherwise reasonable timeframe, where any disadvantage to the requester, who maintains a right to timely access to non-exempt records, might be lessened.

Check out [Decision 17/2021](#) at paragraph 50 for the Information Commissioner's guidance. Also, to learn what must be considered before a public authority may decide to transfer a request, read paragraphs 13-24.

**"I tried but couldn't meet a deadline set by the PATI Act. Does it really matter?" Read [Decisions 16/2021](#) and [18/2021](#) to [22/2021](#) to learn more.**

In December, the Information Commissioner issued five decisions on failure-to-decide applications. During 2021, the majority of decisions issued by the Information Commissioner were for this type of application. These are cases where the applicant had asked the public authority for an internal review but, by the six-week statutory deadline, still awaited the head of authority's decision. The internal review is meant to be the public authority's 'fresh look' at ensuring its response to the PATI request is complete and accurate.

The Information Commissioner used [Decisions 18/2021](#) and [21/2021](#), [Cabinet Office](#) to remind us of why the PATI Act's statutory timeframes matter. Even when circumstances make it challenging for public authorities to do so, meeting deadlines set by the PATI Act is the safest way to preserve a requester's rights to a review and to their timely access to non-exempt records.

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## DECISIONS ISSUED...cont.

In **Decision 21/2021**, the public authority explained its internal review was challenging because the Applicant did not say why they wanted an internal review. The Information Commissioner clarified that, while it can be helpful when a requester shares points of concern or disagreement, the PATI Act does not require it. Public authorities should maintain communication with requesters but move forward with the internal review, as the six-week internal review timeline is not extendable.

Requesters are also responsible to meet a six-week deadline if they wish to ask for an internal review. As seen in **Decision 18/2021**, not doing so can place the requester's right to a review at risk.

In **Decisions 16/2021**, Department of Public Lands and Buildings and **22/2021**, Office of the Governor, the Applicants had not received an initial decision by the statutory deadline. So the internal review decision would be the only substantive response on whether the requested records would be granted to the Applicants or not. Once notified of the Information Commissioner's reviews, these public authorities promptly responded to the Applicants.

**Decisions 19/2021**, Ministry of Social Development and Seniors Headquarters and **21/2021**, Cabinet Office relate to prior applications to the Information Commissioner. In these cases, the public authorities promptly complied with the Information Commissioner's Orders to issue internal review decisions to the Applicants, doing so before the calendar year ended.

To read the full Decisions and others by the Information Commissioner, visit [www.ico.bm](http://www.ico.bm).

### ICO STATISTICS AS OF 31 DECEMBER 2021

(from 1 April 2015)

Total applications for independent review by the Information Commissioner .....	192	Closed: Decided .....	98
Pending investigations .....	41	Closed: Resolved .....	20
Applications pending validation .....	2	Closed: Abandoned .....	7
		Closed: Invalid .....	24



#### SAVE THE DATE

#### Information Commissioner's *Virtual Quarterly Briefing*

Thursday, 3 March 2022, 10:00am - 11:00am

Topic: TBC

ICO Briefings are for public authorities only