



MONTHLY UPDATE

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Welcome!

The Information Commissioner's Office welcomes you to the first edition of our Monthly Roundup! Our Monthly Roundup is intended to keep you up to date with the work of the Information Commissioner's Office. We will share newly released Information Commissioner's Decisions, informal resolution outcomes, new guidance issued by the Information Commissioner, links to relevant news articles from Bermuda and elsewhere, learning opportunities, special events and outreach, etc.

Our Monthly Roundup will benefit anyone who would like to learn more about the work of the Information Commissioner's Office, including Information Officers, Heads of Public Authorities, members of the public who use the PATI Act, members of the legal community, and other stakeholders. Requests to receive these emails or be removed from this email list can be sent to info@ico.bm.

This inaugural issue will summarize developments from the past few months.

"Freedom of Information is a fundamental human right and is the touchstone for all freedoms in which the United Nations is consecrated."

*United Nations
General Assembly*

1946

Let us know your thoughts . . .

If you have suggestions of topics you would like the Information Commissioner's Office to address in guidance or other outreach, don't hesitate to reach out! You can contact us through any of the means below — we'd love to hear from you!

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Decisions Issued

Eleven Decisions have been issued by the Information Commissioner since the PATI Act came into force. These can be found at www.ico.bm. A decision issued by the Information Commissioner is important because it shows how the Information Commissioner has interpreted the provisions of the PATI Act, and this can serve as guidance going forward.

- **When can a Public Authority rely on a law other than the PATI Act to deny access to a record?** That's when section 37 of the PATI Act applies. In [Decision 05/2017 Bermuda Monetary Authority \(BMA\)](#), the Information Commissioner makes it clear that part of the answer lies with whether the other legislation came into force before or after the PATI Act. Even if the other legislation takes precedence, however, it is important to closely examine exactly what the other legislation says before assuming that all of the record can, or must, be withheld.

The Information Commissioner also briefly addressed section 18 of the PATI Act: when does a Public Authority have to release information in a record where most of the information is exempt under the PATI Act, but some information is not? Check out the [Decision](#) to find out more!

“The right to know is the right to live.”
Aruna Roy,
Indian Access to Information Activist

Resolutions

Informal resolution is a great outcome for all parties, but resolution only works if we remember that the PATI Act creates a statutory right of access to records. Therefore, to be acceptable to the Information Commissioner, the outcome of any informal resolution cannot reduce or limit the statutory rights enjoyed by a person who applies for access to such records. Happily we have successfully resolved several matters from the past couple of months to report on.

- **Was it a PATI request?** There was initial confusion about whether an Applicant's email to the Planning Department was intended as a PATI request for records. As a result of the confusion, the Applicant was dissatisfied with the response and asked the Information Commissioner to review the matter. Fortunately it was easily resolved when it was clarified that it should have been handled as a PATI request, and the Applicant has now received the requested records.

For Public Authorities, if a person asks for a record and you are not sure whether or not it is a PATI request (or when in doubt about any aspect of a request) talk to the Applicant! It's part of the duty to assist in section 12(2).

- **If a tree falls in the forest, does anybody hear it? If you publish records requested by the Applicant but don't tell the Applicant or the Information Commissioner, has the PATI Act been complied with?** Both are great questions—and the second one arose when an Applicant requested the grade given to food and beverage premises in relation to their

compliance with health, hygiene, and safety standards. Initially, the Department of Health refused access to the records, although the Applicant was advised that the Department intended to publish them at a future date. The Applicant asked the Information Commissioner to review the decision to refuse access. During the review investigation, the Department of Health published the records on its web site, but did not inform the Information Commissioner or the Applicant, nor did it issue an announcement that it had done so. Instead, it was discovered by the Information Commissioner's Investigation Officer on the Department's web site. The Applicant was advised that the requested information was already published and available, and the Applicant was happy to resolve the matter informally.

We always encourage Public Authorities to publish information, but it helps to tell people you've done so, especially if a PATI request has been filed for the same information!

- **Why should you spend time reading this and attending PATI training?** There are many reasons, but one is that you might find out something that can save a lot of confusion and unnecessary effort! An Applicant requested access to records from the Customs Department. The records were provided, but not until a few days after the time period within which they should have been given to the Applicant. It turns out the delay was caused by the fact that officials at the Customs Department were not aware of an amendment to section 14 of the PATI Act in December 2015 that changed the time frame for providing access. Once the source of the confusion became clear, and the correct time frame was clarified for the Public Authority, the Applicant accepted that this was simply an error, and was willing to resolve the matter informally.

*“Every thing
secret
degenerates,
even the
administration
of justice;
nothing is safe
that does not
show it can
bear discussion
and publicity.”
Lord Acton*



In the News

- In September 2017, Information Commissioners from around the world met in Manchester, UK for their bi-annual international conference. During the conference, the Information Commissioners, including Information Commissioner Gutierrez, agreed on a resolution to promote greater openness in relation to services contracted-out by governments and delivered by private entities. They also resolved to support global initiatives to develop standards for open contracting, and to establish a working group on this subject which would report back at the next international conference in 2019.

The initiative was covered locally:

<http://www.royalgazette.com/news/article/20171013/call-for-greater-scrutiny-of-outsourcing>

<http://bernews.com/2017/10/10/icc-resolution-on-transparency-outsourcing/>

- Following the 2017 Information Commissioners' conference, Information Commissioner Gutierrez and former Scottish Information Commissioner Rosemary Agnew hosted a round table session for new Information Commissioners. Together with the Information Commissioners from Canada and Albania, they presented an overview of the various challenges, opportunities, lessons learned, and international resources available for jurisdictions with new access to information laws and for new Information Commissioners appointed to existing offices. Twenty Information Commissioners from Asia, the Caribbean, Europe, and South America attended.



Jan Liebaers, Deputy Ombudsman for Information Rights for Cayman Islands; Gitanjali Gutierrez, Information Commissioner for Bermuda, and Iain McDonald, Isle of Man Information Commissioner

- In late 2017, Parliament passed the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017. Information Commissioner Gutierrez expressed concern about the effect of this new law on access to information. She also noted that she had not been consulted on the new law:

<http://www.royalgazette.com/politics/article/20171229/privacy-rules-tightened>

As the session occurred as a 'round table' discussion, new Commissioners were made to feel welcome and included. I have no doubt that the contacts made with fellow Commissioners from similar island jurisdictions including the Cayman Islands and Bermuda will be invaluable in the future'.

Iain McDonald, Isle of Man Information Commissioner