



MONTHLY ROUNDUP

Volume 1, Issue 3

March 2018

Welcome!

Inside this Monthly Roundup, you will find a summary of last month's decision and resolution.

We also share the most important word that should be included in any decision notice. Have a read of the Roundup to find out what it is! As always, we hope this information serves as a helpful resource for all involved in PATI work.

Requests to receive the ICO's Monthly Roundup or to be removed from this email list can be sent to info@ico.bm.

“Open government—the opening up of government processes, proceedings, documents and data for public scrutiny and involvement—is now considered as a fundamental element of a democratic society. Both greater transparency and public participation can not only lead to better policies and services, they can also promote public sector integrity, which is essential to regaining the trust of citizens in the neutrality and reliability of public administrations.”

OECD, Directorate for Public Governance 2018

Let Us Know Your Thoughts . . .

If you have suggestions of topics you would like the ICO to address in guidance or other outreach, don't hesitate to reach out! We'd love to hear from you!

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Decision Issued

In February, the Information Commissioner issued a decision involving personnel records, including some located with an outside vendor. Her decisions can be found at www.ico.bm. A decision issued by the Commissioner is important because it shows how the Commissioner has interpreted the provisions of the PATI Act, and this can serve as guidance going forward.

When does a public authority need to include a contractor's records in its search in response to a PATI request? The Commissioner considered this question, and others, in [Decision 02/2018](#) *Department of Human Resources*. The requester sought their own personnel records from the Department of Human Resources (DHR). During the Information Commissioner's review, DHR abandoned its initial refusal on exemption grounds. Some of the records the requester wanted were located with one of DHR's vendors and related to the vendor's contract for services with DHR.

The Commissioner found that section 3(4) of the PATI Act includes in its definition of records "held by" a public authority any of the records in the possession of a vendor if the records related to the services in the contract. A public authority needs to include these records in its search.

Decision 02/2018 is also a reminder that under the PATI Act, records include emails and other electronic files. Remember to include them in searches!

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.

- **Can you talk it out?** The PATI Act does require formal steps and includes many exemptions. But be careful not to get too entrenched in exemptions and formalities that you miss the forest for the trees. The overarching purpose of the PATI Act is to provide access to public records as much as possible within its provisions.

In a 2017 case that was resolved in February, the requester asked for an Information Commissioner's review because they knew the public authority did not disclose all of the responsive records. We learned during the ICO's investigation that the authority had interpreted the request narrowly. We helped the public authority understand how to appropriately interpret the request. It agreed to disclose other records that were initially not identified

and learned how to document searches of its emails. We also explained to the requester why someone else's personal information wasn't disclosed. After these discussions, the requester was satisfied and the case resolved.

Remember a PATI request should be interpreted appropriately and when in doubt—ASK the requester! It's part of the duty to assist in section 12.

The one word every refusal notice must have

What is the single most important word in any decision refusing a PATI request?

“Because!”

A decision notice must do more than list the section of the PATI Act used to refuse a request. Sections 14 and 43 of the Act require the decision notice to explain **why** the public authority is using that section.

A decision must include the **facts** and **reasons** justifying the exemption or administrative denial. If the public interest test is involved, the decision should list the factors that were considered. Then the public authority can explain how these factors were weighed to reach the decision.

For example, a public authority uses the exemption for prejudice to the outcome of negotiations, section 25(1)(d), to refuse a request for a CEO's memo to its board. The decision should explain that the record is exempt **because** the public authority is in negotiations with its vendor. The record contains the CEO's recommendations for the authority's position in the next meeting scheduled with the vendor the following month. Then the decision should discuss the public interest test. If the public authority cannot identify any particular negotiations with an outcome that could be affected, it will be harder to use this exemption.

Helping the requester understand **why** the decision was made may also help them accept the refusal or only seek a review of certain parts of it.

REMEMBER:

A good decision notice should:

- **State** the outcome of the decision
- **Share** the facts that the decision relies on
- **Explain** why these facts mean the PATI Act won't allow for disclosure
- **Inform** the requester of their right to a review

ICO Statistics as of 28 February 2018

Total
Applications: 67

Pending
Investigations: 34

Decisions: 12

Resolved: 6

Invalid: 11

Abandoned: 4