



# MONTHLY ROUNDUP

Volume II, Issue I

December 2018/January 2019

## Welcome!

The Information Commissioner's Office welcomes you to the first of our Monthly Roundup series for 2019!

Our Monthly Roundup benefits 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 in our community.

As always, inside this Monthly Roundup, you will find a summary of the Information Commissioner's latest decisions and lessons from resolved cases from December 2018 and January 2019. You will also find the latest statistics for our cases.

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](mailto:info@ico.bm).

## 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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*As part of the good governance reforms in the public service to promote transparency and improve accountability, information previously protected as a matter of policy or practice within government is precisely the type of information to which the PATI Act now provides the public access, unless it properly falls within a listed exemption.*

*- Decision  
12/2018,  
Gitanjali  
Gutierrez,  
Information  
Commissioner*

## Decisions Issued

In December 2018 and January 2019, the Information Commissioner received five new applications and issued four decisions. Her decisions can be found at [www.ico.bm/decisions](http://www.ico.bm/decisions). Highlights from the decisions include:

**How do you know when records fall within a secrecy provision of other legislation?** The Information Commissioner addressed this question in **Decision 12/2018**, Ministry of Finance Headquarters. The exemption in section 37 of the PATI Act allows a public authority to withhold a record if its disclosure is prohibited by other legislation. The Ministry of Finance had relied upon the official secrecy provision in section 4(1) of the Taxes Management Act 1976 to withhold records related to amounts owed for payroll tax, social insurance contributions, and land tax by Sandys 360.

**Decision 12/2018** highlights the need to review a secrecy provision carefully to determine what records it covers. In looking at the schedule to the Taxes Management Act, only the payroll tax records in Decision 12/2018 were covered by the secrecy provision. The Information Commissioner found that the Ministry of Finance had not justified denying access to records related to the amounts of social insurance and land tax owed in this case, and ordered disclosures. Remember—review secrecy provisions carefully before relying on the PATI Act exemption in section 37.

**Is there an exemption to protect legal professional privilege?** In **Decision 13/2018**, Ministry of Finance Headquarters, the Information Commissioner made clear that the answer is yes. The request was for the legal opinion from Bennet Jones related to whether a letter of entrustment was needed and correspondence with the UK Government related to the airport redevelopment agreement with the Canadian Commercial Corporation. The Ministry of Finance released all but two records during the ICO's investigation.

In **Decision 13/2018**, the Information Commissioner found that the Ministry of Finance was justified in denying access to the legal opinion because it was exempt under section 35(1) of the PATI Act, which protects legal professional privilege. In discussing the public interest test, the Information Commissioner stated that there is 'a strong inbuilt public interest in protecting the openness in communications between a client and lawyer'. Finally, the Information Commissioner also found that the Ministry of Finance properly applied the exemption for information communication in confidence by a State to withhold a record.

### ICO Statistics as of 31 January 2019

Total Applications:	99
Pending Investigations:	38
Pending Validation:	2
Decisions:	25*
Resolved:	11
Invalid:	16
Abandoned:	7

\*1 decision is under judicial review

## Decisions Issued, cont.

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**When does personal information need to be disclosed? It depends on the facts.** In **Decision 02/2019**, Office of the Governor (known as Government House), the Information Commissioner considered whether several different types of personal information should be disclosed. The request was for records related to the recruitment and appointment of the Director of Public Prosecutions (DPP) in 2013 and 2015. The Information Commissioner carefully considered records containing the personal information of various individuals, including those under consideration for the DPP post and individuals performing public functions or responsibilities. In Decision 02/2019, the Information Commissioner found some of the personal information should be withheld, but not all of it. To learn more about applying the personal information exemption, you can read the published decision.

In **Decision 02/2019**, the Information Commissioner also found that Government House justified its use of the exemptions for deliberations of public authorities (section 29) and the Governor's communications (section 33(1)(b)) for some of the records, or part of the records. The Information Commissioner did not find that the exemptions for information given in confidence (section 26(1)(a)) or the Governor's responsibilities (section 33(1)(a)) were justified.

## December 2018 Information Commissioner's Briefing

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On 5 December 2018, the Information Commissioner held a quarterly briefing discussing the new ICO Annual Return and the exemption in section 37 when disclosure is prohibited by other legislation. The briefing had nearly double the number of attendees, with 65 participants from 47 different public authorities, with a number of them attending for the first time.

Deputy Information Commissioner Angie Farquharson provided an overview on how to complete the new ICO Annual Return. She also highlighted how the PATI Act, and its requirements, were designed to further the good governance reforms begun in the late 1990s. The ICO Annual Return enables the Information Commissioner to monitor, support, and ensure public authorities' compliance with these requirements.

Information Commissioner Gutierrez provided a general overview of the steps public authorities should take in applying exemptions. She explained how to use the ICO Exemption Guidances as a resource, and then explained the application of the exemption in section 37 when disclosure is prohibited by other legislation.

The presentation slides and presenter notes from the December briefing are available at [www.ico.bm](http://www.ico.bm) under **ICO Guidances and Publications** on the Publications tab.

**SAVE THE DATE:**

**Information Commissioner's Quarterly Briefing**

Thursday, 7 March 2019

**Upcoming Information Commissioner's Presentations**

*I Want To Know! The PATI Act & You*  
St. George's Parish Council Annual General Meeting  
St. George's Community Centre  
6:30pm, Wednesday, 20 February 2019

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If you would like to invite the Information Commissioner to make a presentation on public access to information under the PATI Act, please email us at [info@ico.bm](mailto:info@ico.bm)

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**JANUARY 2019 PRESENTATIONS**

Business Acumen Series, Internal Audit  
*The ICO and PATI Act*  
Friday, 11 January 2019

Bermuda Health Council Board of Directors  
*Governance Implications of the PATI Act*  
Thursday, 24 January 2019

The Royal Gazette  
*Media and the PATI Act*  
Thursday, 31 January 2019

**ALPHABET SOUP**

PATI - Public Access to Information  
PATI Act - Public Access to Information Act 2010  
ICO - Information Commissioner's Office  
IC - Information Commissioner