Information Commissioner's Office

MONTHLY ROUNDUP

Volume II, Issue 6 June 2019

Access to public information is a check on the government's power. An informed citizenry is one of the cornerstones, of our democracy. Without information about what our government is doing, we can't make assessments about decisions our government is making. – **Sandra Chance**

WELCOME!

The Information Commissioner's Office (ICO) welcomes you to the June 2019 issue of our Monthly Roundup! The ICO is an independent, public office that promotes and oversees the use of the Public Access to Information (PATI) Act 2010 in Bermuda.

Section 12(1) of the PATI Act gives Bermudians and residents of Bermuda the legal right to access records held by public authorities, unless the PATI Act allows a public authority to withhold access to that record. PATI requesters are empowered under the Act to pursue and enforce these rights. The institution of the Information Commissioner in Bermuda is key to safeguarding this statutory framework.

In Bermuda, public access to information community stakeholders include information officers, heads of public authorities, requesters, the public, as well as many other local special interest groups.

The ICO is guided by its core values: ***Independence, Integrity and Fairness***. We hope that the information in our Roundups reinforces the benefits of the PATI Act for Bermuda, increases the public's understanding of how to use their legal rights under the PATI Act, provides guidance to public authorities about their responsibilities under the PATI Act, and builds confidence in the ICO's role in safeguarding these rights and responsibilities.

IN THIS ISSUE:

- We take another look at gazetting contracts with a total value of $50K+
- PATI and PIPA: The Commissioner weighs in on TechTalk Panel
- Recent Information Commissioner's decisions and resolutions
- Our monthly recap: Statistics for our cases

Information Commissioner's Office
Valerie T. Scott Building
60 Reid Street
Hamilton HM 12
441-294-9181
info@ico.bm
www.ico.bm
www.facebook.com/icobermuda

DECISIONS ISSUED

In June, the Information Commissioner issued 5 decisions and resolved 1 case.

Can public authorities issue an 'interim' decision under the PATI Act?
The answer is no. In **Decision 14/2019**, Department of Health, the Information Commissioner discussed the Department of Health's handling of two PATI requests for records relating to childcare providers and daycare centres.
Due to a number of challenges, the Department of Health chose not to issue internal review decisions on the Applicant's PATI requests within the six-week timeline set out in the PATI Act. Instead, the Department extended the timeline to issue the internal review decisions twice, before finally issuing what the Department referred to as 'interim' internal review decisions to the Applicant.

Decision 14/2019 emphasized that the PATI Act has no provision relating to the issuance of 'interim decisions'. Such decisions may confuse a requester, and may undermine the requester's right to ask for an independent review by the Information Commissioner of a public authority's internal review decision. If a public authority intends to disclose records at the internal review stage, but is somehow unable to do so within the timeframe in the PATI Act, it must still issue an internal review decision on the PATI request. Once and if the circumstances change, the public authority can always decide to disclose the records at a later stage.

Search, Search, Search. In **Decision 15/2019** Ministry of National Security Headquarters, the requester sought email records of the Permanent Secretary of the Ministry of National Security containing keywords related to certain drugs and drug reform between 2012 and 2016. The PATI request was initially denied on the basis that the records did not exist under section 16(1)(a). The public authority upheld that initial decision in its internal review decision. As a result, the requester appealed to the Information Commissioner for an independent review.
During the Information Commissioner's review, the Ministry of National Security agreed to conduct additional searches and was able to locate responsive records. The Ministry of National Security also agreed informally to process the records and issue a new initial decision on whether to grant or refuse access to the records.

The Applicant exercised their right to a decision by the Information Commissioner. During her review, the Information Commissioner found that the Ministry of National Security had incorrectly relied on section 16(1)(a) because responsive records did exist. The Information Commissioner ordered the Ministry to issue a new initial decision within six weeks of the Decision Notice.

DECISIONS ISSUED continued...

Remember, PATI requesters have a right to an internal review decision within the statutory timeframes. In **Decision 16/2019** Ministry of Legal Affairs Headquarters, the Information Commissioner affirmed the obligation on public authorities to issue an internal review decision. The Information Commissioner found that the Ministry of Legal Affairs had failed to issue an internal review decision within the statutory timeframes under the PATI Act. Given that an internal review decision was issued during the course of the Commissioner's independent review, the Ministry of Legal Affairs was not required to take any further steps.

What if information records are available in public domain? Public authorities can deny the request if all information is publicly available. Decision 17/2019, Ministry of Finance Headquarters, relates to a refusal on a PATI request for records of correspondence between the former Finance Minister and the Canadian Commercial Cooperation, on the airport development agreement, between 2012 and 2015.

The Ministry refused access to records of correspondence dating between 2012 and 2014 under section 16(1)(f) of the PATI Act which allows public authorities to refuse a request if the information sought is available in the public domain.

The Ministry claimed that the relevant correspondence is already available through disclosures made under the Canadian access to information law and are available on the internet.

The Ministry denied access to the remaining records of correspondence because the Ministry argued that it did not hold any responsive 2015 records of correspondence.

ICO Statistics as of 30 June 2019

(from 1 April 2015)

Total applications for independent review by the Information Commissioner:
117

Pending investigations:
37

Pending validation:
1

Decisions**:
42*

Resolved:
13

Abandoned:
7

Invalid:
17

*One decision is under judicial review.

**The number in the 'Decisions' category does not represent the number of decisions issued. Decision14/2019 addressed two separate, but related, cases."

DECISIONS ISSUED continued...

The Information Commissioner clarified in **Decision 17/2019** that, for public authorities to appropriately rely on section 16(1)(f), they have to first familiarize themselves with the information in its records that are responsive to the PATI request. This requires public authorities to locate the responsive records. Secondly, public authorities can properly rely on section 16(1)(f) only if information in the responsive records is available in the public domain in full. In **Decision 17/2019**, the Information Commissioner found that the Ministry's reliance on section 16(1)(f) was not justified.

Can search issues be resolved through facilitated resolution? Yes. Decision 18/2019, Department of Immigration, looks at the Department of Immigration's handling of a PATI request for records relating to the four Uighurs, who arrived in Bermuda in June 2009, as well as their dependents. Although the Department of Immigration disclosed a number of redacted records, the Applicant asked the Information Commissioner to conduct an independent review of the reasonableness of the Department of Immigration's search.

The Acting Information Commissioner's review revealed that the Department of Immigration appeared to have misunderstood the scope of the PATI request. The parties agreed to attempt a facilitated resolution, and the Department of Immigration agreed to conduct additional searches to locate the other records responsive to the PATI request, which the ICO verified.

The Department of Immigration was given the opportunity to process the additional records it found and to issue a new initial decision. The Department of Immigration did so and was not ordered to take further actions at this stage.

SAVE THE DATE

Future Information Commissioner's Quarterly Briefings:
Thursday, 12th September 2019
Thursday, 5th December 2019
Thursday, 12th March 2020

RSVP will be required.
Registration details will be emailed to public authorities.

ISACA TechTalk Panel: Information Commissioner Weighs in

Section 23 of the Public Access to Information Act 2010 states that if a record consists of personal information, it is exempt from disclosure, with exception under specific circumstances listed in the Act. Protecting the personal information of employees, customers, clients, vendors, etc. is rapidly becoming a critical component of doing business, not just amongst Bermuda's public authorities but also for all local businesses.

Public and private entities that capture and hold personal information must ensure that they have the resources in place to facilitate compliance with both the PATI Act and Personal Information Protection Act 2016 (PIPA).

At the recent TechTalk co-hosted by the Department of ICT Policy and Innovation, Bermuda Economic Development Corporation and Information Systems Audit and Control Association (ISACA) Bermuda, the topic for discussion was "Privacy for Everyone". Information Commissioner Gitanjali Gutierrez joined fellow panelists Cha'Von Clarke Joell of TLC Group, Stuart Lacey of Trunomi and moderator Dr. Marisa Stones, from the Department of ICT Policy and Innovation. The panelists spoke to an audience of diverse local business owners and stakeholders about the importance of understanding the impact privacy protection has on their business processes and procedures.

The majority of the discussion focused on the information small business owners need to be aware of and prepared for when Bermuda fully enacts its privacy legislation. PIPA is due to come into complete effect later this year. Attendees were encouraged to consider their businesses' wider responsibilities when collecting, holding, using and releasing personal data. The informative panel discussed learning lessons using international examples of actual data breaches while providing food-for-thought to the local business owners in attendance on how to protect their businesses and reputations from the risks associated with data breaches of personal information. Commissioner Gutierrez used this opportunity to highlight the forthcoming harmonization between PATI and PIPA, specifically regarding personal information.

Taking Another Look at Contracts with a Total Value of $50K or More

On 1 April 2015, the Public Access to Information Act 2010 went into effect. Section 6(6) of the PATI Act requires all public authorities to publish in the Official Gazette. The following details of contracts with a total value of $50,000 or more:

- the name of the contractor;
- the monetary value of the contract;
- the goods and services to be provided under the contract; and
- the time for performance of the contract, i.e., the completion or delivery date.

These contracts must be gazetted in accordance with the PATI Act unless a particular contract detail would constitute exempt information. Exempt information is defined in the specific provisions in Part 4 of the PATI Act. Under the Act, an ***exempt contract detail*** does not need to be gazetted, **but** all other ***non-exempt contract details*** must still be gazetted for the public.

The PATI Act's requirements for public authorities to gazette the overall details of their larger contracts fulfills important purposes of public access to information.

It ensures that the public is aware of the spending of public funds and reduces unnecessary secrecy. Importantly, it also allows potential vendors to understand what contracts may be available with government and for the public to assess how contracts are procured and managed. Such details allow the public a deeper understanding, as well, of how a public authority delivers its service and meets the public need.

USEFUL LINKS

Public Access to Information Act 2010
Public Access to Information Regulations 2014
Public Authorities' Listing
Government of Bermuda's Government Notices
Government of Bermuda Organizational Chart

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

Information Commissioner's June Quarterly Briefing

On 13 June 2019, the Information Commissioner held a quarterly briefing discussing the requirements for transferring a PATI request (section 13 and regulation 8) and for providing notification to third parties (section 39 and regulations 10 and 11). The briefing was well-attended, with approximately 36 attendees from 29 public authorities.

The Information Commissioner provided a general overview on when a PATI request should be transferred to another public authority. She explained the steps that should be taken by an Information Officer before and after transferring a request and provided best practice guidance.

The Information Commissioner also provided a general overview on public authorities' obligations to notify and consult with a third party during the PATI process. The Commissioner explained the circumstances under which third party notification is required under the PATI Act and highlighted the regulations applicable to personal information, which differ from the other exemptions. The Commissioner also highlighted the purpose of third party notification, which is to allow authorities to balance the need to provide public access to information with the need to protect the rights of others.

The presentation slides and presenter notes from the June 2019 briefing are available at **www.ico.bm** under **Publications** tab.

TAKE A CLOSER LOOK!

The slide presentation from June's Quarterly Briefing includes 'What If' scenarios that public authorities may face when evaluating a PATI request that should be or has been transferred to another public authority.