



MONTHLY ROUNDUP

Volume II, Issue 3

March 2019

“Members of the public with diverse interests are increasingly using the PATI Act and are asking public authorities to be accountable in their decisions and actions.”

*Gitanjali Gutierrez,
ICO Annual
Report 2018*

WELCOME!

The Information Commissioner's Office welcomes you to the next issue of our Monthly Roundup!

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.

Inside this Monthly Roundup, you will find:

- An update on the IC's decision that is currently under Judicial review
- Statistics for our cases
- A report on the 11th International Conference of Information Commissioners

April 2019 marks 4 years since the enactment of the PATI Act. In this roundup, we take a look at some of the strengths and weaknesses of Bermuda's PATI legislation as assessed by the Centre for Democracy.

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.

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!

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

JUDICIAL REVIEW UPDATE

What is the Information Commissioner's jurisdiction under the PATI Act?

The Supreme Court has recently affirmed that the IC's jurisdiction under the PATI Act is limited to reviewing the decision made by the head of a public authority in relation to a PATI request and if appropriate, to order the production of records responsive to the PATI request.

[The Supreme Court's ruling](#) was in response to an application to strike out various grounds of a judicial review application, which challenged the IC's [Decision Notice 02/2018: Department of Human Resources](#). The Applicant brought the judicial review proceedings on three grounds:

1. He was not satisfied with the IC's conclusion that the Department of Human Resources (DHR) has complied with her Decision Notice 02/2018;
2. He disagreed with the IC's conclusion that she did not find any evidence to support the Applicant's allegations that the DHR engaged in fabrication, concealment, collusion or any other act of bad faith; and
3. The Applicant sought a ruling from the Supreme Court that DHR provided records that were 'falsely generated' and 'consistent to an employer engaging in an attempt of constructive dismissal'.

The Supreme Court struck out two of the three grounds sought by the Applicant in the judicial review proceedings. Chief Justice Narinder Hargun found that:



'It is beyond the jurisdiction of the IC under the PATI Act to make a determination whether the documents ordered to be produced "were falsely generated" or to make a determination whether the documents produced are "consistent with an employer engaging in an attempt constructive dismissal". There is no scope within the PATI Act for the IC to make such determinations.'

The Supreme Court ruled that the Applicant's allegations are not an appropriate subject matter of judicial review proceedings. The Supreme Court found that the allegations are 'controversial fact sensitive' which are made against a number of individuals who are not party to the judicial review and the determination of which may require extensive witness evidence. The judicial review proceedings will continue, as the courts consider the Applicant's challenge to the IC's conclusion that the DHR has complied with the Order.

ALPHABET SOUP

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

BERMUDA VS THE WORLD: HOW DOES THE PATI ACT COMPARE?



With 4 years of existence, how does Bermuda's PATI Act compare to other jurisdictions with access to information laws? To gain clarity around Bermuda's position on a global scale, at the request of the IC, the Centre for Law and Democracy (CLD) measured the strengths and weaknesses of the PATI Act against the Global Right to Information Rating. The Rating consists of 61 internationally accepted indicators that are features of a good access to information law. These indicators include seven categories: Right of Access and Scope, Duty to Publish, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures.

In the Report recently published by the CLD, the PATI Act ranks 45th out of 123 countries. The Act scored 97 points of a possible score of 150. Though this score may seem respectable, if the PATI Act had only been compared to more recent freedom of information laws, this rating would be weaker. The CLD recommends that Bermuda takes steps to consider PATI Act amendments.

CLD finds that the PATI Act's strongest point is its provisions on measures to promote access to information. Since the PATI Act grants the Information Commissioner with extensive powers and provides robust protections for the independence of the Information Commissioner, it also scores relatively well in the Appeals category.

The weaknesses of the PATI Act relates to its limited scope, the procedures for making and processing requests, and its regime of exemptions. Currently, the PATI Act only allows individual citizens and residents to make a PATI request. As a comparison, the acceptable international standards allows for everyone (including non-citizens and legal entities) to have the right.

The Report finds that the 6-week timeline for responding to PATI requests and the corresponding provisions for possible extension of time, to be "problematical". It further highlighted that the PATI Act carries a number of exceptions that are not considered legitimate under international standards. Some of these exceptions are:

1. Denial due to administrative burden (section 16(1)(c));
2. Exemptions relating to international tax agreements (section 26A);
3. Cabinet records (section 27); and
4. Management functions of public authorities (section 30(1)(b)).

The Report calls for the strengthening of the PATI Act and sets out a number of recommendations, including the incorporation of provisions requiring a proper records management system and the revision or repeal of some of the exemptions.

To access the full report and for further information on CLD and the RTI Rating, please visit www.law-democracy.org/live/

2018 ICO ANNUAL REPORT PUBLISHED

Consistent with Section 58(1) of the PATI Act, the Information Commissioner tabled her 2018 Annual Report this month. The Report is now available at www.ico.bm and 2018 highlights include:

- Public authorities reported receiving 133 new PATI requests in 2018.
- 88% of the public believes that the right to access public records under the PATI Act is important
- 62% of the initial decisions granted access in whole or in part
- 41% increase from 2017, in applications to the Information Commissioner, requesting an independent review of a public authority's decision on a PATI request
- The ICO launched a new ICO Annual Return that provided information on the authorities' compliance with the requirements in the PATI Act to publish their Information Statements, gazette contracts with a total value of \$50,000 or more and additional requirements
- 100% of Government Departments filed their 2018 ICO Annual Return this year
- The Information Commissioner launched her Quarterly Briefing series
- 181 participants from 78 public authorities attended the Quarterly Briefings



The Information Commissioner's accounts are audited annually by the Auditor General. Our audited financial statements and other information about our public spending are available on our website under [About the ICO/ Our Spending](#).

SAVE THE DATE

INFORMATION COMMISSIONER'S QUARTERLY BRIEFING

Wednesday, 13 June 2019

RSVP will be required.

Registration details will be emailed to public authorities.

ICO Statistics as of 31 March 2019

Total Applications: 104

Pending Investigations: 36

Pending Validation: 4

Decisions: 30*

Resolved: 11

Invalid: 16

Abandoned: 7

* One decision is under judicial review

STRENGTHENING THE SKILLS OF THE ICO TEAM - ALTERNATIVE DISPUTE RESOLUTION: NEGOTIATION AND MEDIATION SKILLS TRAINING

During the Information Commissioner's independent review of a public authority's decision on a PATI request, ICO investigators sometimes have the option of facilitating a resolution between the applicant, public authority, and, concerned third parties.

In an effort to be as effective as possible in facilitating a resolution between the parties and in our other roles, the ICO team participated in a comprehensive 4-day workshop centered on alternative dispute resolution under the instruction of Jason Stitt of the Stitt Feld Handy Group. With a combination of theory and practical applications, we strengthened our dispute resolution skills by better understanding how to use the elements of Principled Negotiation when negotiating or while resolving disputes. Throughout the workshop, we identified varying approaches to negotiation, evaluated ways to move negotiation forward and practiced the process of mediation.



Topics of interests included 7 Elements of Principled Negotiation and 7 Stages of Mediation while a key component of the learning modules incorporated interactive listening techniques.

ICO Office Manager Tikitta Suhartono sums up her experience: "I thoroughly enjoyed the learning experience and now hold a valuable set of tools, which will help guide me when making personal and professional decisions."

ICO DELEGATION ATTENDS THE 11TH INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS



On 9 March 2019, a delegation from the Bermuda ICO travelled to Johannesburg, South Africa, to attend the 11th International Conference of Information Commissioners (ICIC). The ICIC is constituted by Information Commissioners and Ombudsmen from across the globe who meet regularly to discuss topical issues related to the protection and promotion of the right to public information for the benefit of citizens.

The mission of the ICIC is to “*share knowledge and best practices, to build capacity, to help identify what is needed for global progress and to act as a collective voice in international fora with a view to improving people’s right to public information and their ability to hold to account bodies that provide public functions.*”

The themes highlighted at the Conference included transparency in elections, the role of technology in access to information, the establishment of independent and effective oversight bodies, the interrelationship between access to information and data protection, and access to information rights as a sustainable development goal.

This year, Information Commissioners and Ombudsmen from over 30 countries adopted the Johannesburg Charter. This was a historic and significant milestone in the permanent establishment of the ICIC, which was first held in Berlin, Germany in 2003. With the Charter in place, the ICIC now has the formal governance structure to become a fully functioning international body and to work towards its mission of sharing knowledge, building capacity and being a global voice promoting access to information rights across the world.

The Conference was attended by Information Commissioners, Ombudsmen, and civil society representatives from almost 35 countries, including Argentina, Australia, Bermuda, Brazil, Canada, the Cayman Islands, Chile, Ethiopia, Germany, Ghana, Gibraltar, Hungary, India, Kenya, Liberia, Malawi, Nepal, the Philippines, Scotland, Sierra Leone, South Africa, South Sudan, Spain, Tunisia, The United Kingdom and Uruguay.

Bermuda’s Information Commissioner was invited to join the ICIC Governance Working Group to assist with the development of the ICIC’s processes in line with the Charter. Strategic priorities for the ICIC in the year ahead include transparency in elections, engagement with international bodies, and stability of funding for the secretariat.

This feature is the first of a 3-part series which will focus on takeaways from the ICO team’s attendance at the ICIC Conference.