



MONTHLY ROUNDUP

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May 2019

“Public business is the public’s business. The people have the right to know. Freedom of information is their just heritage. Without that the citizens of a democracy have but changed their kings.”

Harold L. Cross, author of *The People’s Right to Know* (1953)

WELCOME!

The Information Commissioner’s Office (ICO) welcomes you to the May 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.

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DECISIONS ISSUED

In May, the Information Commissioner issued 5 decisions, resolved 1 case, and closed 1 invalid application. We discuss highlights from decisions:

Must the requirements for individual exemptions be met for records to be withheld? In [Decision 09/2019](#), the Information Commissioner reaffirmed that the answer is, 'yes'. [Decision 09/2019](#), involved the internal review decision by the Department of Public Lands and Buildings that refused a PATI request for KPMG's business review report on Sandys 360 Sports Center. The Department holds a copy of the report, making it a public record.

In addition to considering submissions from the Department and the Applicant, the Commissioner provided an opportunity for KPMG, the Trustees of Sandys Secondary School, the Sandys 360 Sports Centre Company, and HSBC to make submissions as concerned third parties. This is the first decision when the Commissioner invited submissions from concerned third parties.

Based on the Department and third parties' arguments, the Information Commissioner carefully considered five different exemptions in section 25(1)(b) (information with commercial value), section 25(1)(c) (commercial interests), section 25(1)(d) (prejudice to negotiations), section 26(1)(a) (information received in confidence), and section 26(1)(b) (breach of confidence). For a helpful overview of the specific requirements of these exemptions, read [Decision 09/2019](#).

The Commissioner has found that despite the assertion of many exemptions, the specific requirements were not met for any one of them. The Information Commissioner has also found that even if an exemption was applicable, the public interest factors in favour of disclosure are weighty and further the core purposes of the PATI Act. These include informing and empowering the public to engage with government decision makers, as well as providing more information about public spending.

The Information Commissioner ordered the Department to disclose the Sandys 360 report, with certain personal information removed.



DECISIONS ISSUED continued...

Is personal information about individuals released after serving sentences for sex offenses properly withheld under the PATI Act? In [Decision 10/2019](#), the Information Commissioner has upheld the Department of Corrections' decision to deny public access to records about individuals convicted of sex offenses who were released from prison in 2006-2016 on the grounds that the personal information exemption in section 23(1) applies to the records. The requester sought various details about the individuals and information about their rehabilitation while in prison.

The Information Commissioner has found that the right to privacy carries great weight, including for individuals convicted of sex offenses who have served their time and are released. Read [Decision 10/2019](#) for a discussion of how the release of less intrusive information—such as statistics and policy documents—can further the public interest in promoting public engagement in policy and other decision making.

The Information Commissioner has also noted that the Government's Protocol on the Disclosure of Information Identifying Sex Offenders ('Protocol') provides the mechanism for disclosing information on sex offenders released from prison. Under this Protocol the Minister for Legal Affairs—after considering a number of broad and individualised factors—can, and has made, disclosures about released sex offenders to the public or a smaller group of people, such as a neighborhood.

Will the Minister's Practice Codes on the administration of the PATI Act and on records management provide important support for public authorities? In [Decision 11/2019](#), Department of Child and Family Services, the Information Commissioner has agreed with the Department that the Minister's PATI practice codes will provide 'practical, how-to advice' for public authorities on managing their PATI obligations.

The Information Commissioner has acknowledged that public authorities need these additional sources of support and guidance as they work to fulfill their obligations under the PATI Act. Even in the absence of practice codes, however, the Information Commissioner is mandated to enforce the provisions of the PATI Act. The Department accepted the Information Commissioner's conclusion that it failed to issue an internal review decision within the timeframe set out in the PATI Act.

TAKE A LOOK!

The up-to-date Government of Bermuda Organizational Chart was recently published. Click [HERE](#) to find it!

DECISIONS ISSUED continued...

Is the beneficial ownership registry properly withheld under the PATI Act? In [Decision 12/2019](#), Bermuda Monetary Authority (BMA), the Information Commissioner has agreed with the BMA that the PATI Act did not require disclosure of the BMA's beneficial ownership registry.

The BMA refused a PATI request asking for the beneficial ownership registry on the basis that the exemption in section 37 applied because the disclosure was prohibited by legislation other than the PATI Act. The BMA pointed to the secrecy provision in section 31(1) of the Bermuda Monetary Authority Act 1969 (BMA Act). Section 31(1) of the BMA Act requires the officers, servants, and advisors of the BMA to preserve and aid in preserving secrecy of 'all matters relating to the affairs of the Government or the Authority or of any person that may come to' one's knowledge in the course of their duties.

In [Decision 12/2019](#), the Information Commissioner has accepted this argument and has found that the requested records properly fall within section 31(1) of the BMA Act. The Information Commissioner upheld the BMA's decision.

Does the PATI Act require public authorities to issue an internal review decision? In [Decision 13/2019](#), Attorney General's Chambers, the Information Commissioner affirmed the obligation on public authorities to issue an internal review decision. No submissions were received from the public authority in this 'failure to decide' case. In [Decision 13/2019](#), the Information Commissioner ordered the Attorney General's Chambers to issue an internal review decision to the Applicant.

ICO Statistics as of 31 May 2019 (from 1 April 2015)

Total Applications for
independent review by
the Information

Commissioner: 115

Pending Investigations: 40

Pending Validation: 2

Decisions: 36*

Resolved: 13

Abandoned: 7

Invalid: 17

* One decision is under judicial
review

SAVE THE DATE**INFORMATION COMMISSIONER'S QUARTERLY BRIEFING
FOR PUBLIC AUTHORITIES**

Thursday, 13 June 2019

Topics: Transfers of PATI requests under section 13 and third party notifications under section 39.

RSVP is required. Registration details have been emailed to public authorities.

Future Information Commissioner's Quarterly Briefings:

Thursday, 12th September 2019

Thursday, 5th December 2019

Thursday, 12th March 2020

UPCOMING PRESENTATIONS

Information Systems Audit and Control Association (ISACA) in partnership with BEDC presents a Privacy/General Data Protection Regulation (GDPR) TechTalk
Information Commissioner Gitanjali Gutierrez will join the panel for this event
Thursday, June 13th 2019

Good Governance: The PATI Act & PIPA
Regulatory Authority of Bermuda Board of Commissioners
Thursday, June 20th 2019

USEFUL LINKS

[Public Access to Information Act 2010](#)

[Public Access to Information Regulations 2014](#)

[Public Authorities' Listing](#)

[Government of Bermuda's Government Notices](#)

INTERNATIONAL PARTNERSHIPS



ICIC Part 3 of 3

This following feature is the final installment of a 3-part series, which focuses on the ICO team's takeaways from their attendance at the 11th International Conference of Information Commissioners in March 2019.

“If information is power, then access to information is empowerment.”

This is a quote from Ms. Audrey Azoulay, UNESCO's Director General, which was part of a video presented by UNESCO on the International Right to Know Day, recognized on 28 September every year. This video was played at the Conference.

During the Conference Daren Fitzhenry, the Scottish Information Commissioner, gave a presentation on the benefits of access to information from the point of view of the public authorities. The Commissioner highlighted the following benefits:

- Access to information prevents misconduct or criminal behaviour by increasing transparency and making it more likely that people will get caught for inappropriate or criminal conduct.
- Access to information enables public authorities to demonstrate how well they have been performing and the improvements they have made by proactively publishing information.
- Access to information creates a culture of openness, fosters good relationships and supports collaborative working by making information available.
- Access to information builds trust and confidence (which is essential for effective partnership working) by being open with information. People trust organisations that share information about their activities.

Did you miss Part I & II in this series?

Check out our [March and April 2019 Monthly Roundups!](#)

DID YOU KNOW?

Information Commissioner Gutierrez is now a member of the Governance Working Group, which is mandated to further the implementation of the new ICIC Charter. More information is available in the [ICO's 2018 Annual Report](#).

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

STRENGTHENING THE ICO

The ICO's work is very unique for Bermuda. We are the only public office mandated to promote and safeguard the public's right to access public records. Because we are the only ICO in Bermuda, our opportunities to sharpen our skills in a



specialized training environment are limited. Recently the Office of the Ombudsman for Bermuda successfully hosted the 10th Biennial Caribbean Ombudsman Association (CAROA) Conference and Training, under the theme of 'Strengthening the Role and Performance of the Ombudsman and Human Rights Institutions in the Caribbean and Latin America'. The ICO expresses appreciation to the Ombudsman for inviting the participation of our Office in the program and training opportunities targeted for Ombudsman offices and other good governance bodies.



10th BIENNIAL CAROA CONFERENCE 2019

Information Commissioner Gitanjali Gutierrez participated in a panel discussion focused on 'Strengthening Relationships While Maintaining Independence'. Panelists included Jonathan Bell, Senior Reporter for the Royal Gazette; Venous Memari, Managing Director for the Centre for Justice; Lisa Reed, Executive Officer for Human Rights Commission; and Ombudsman for Bermuda Victoria Pearman. The panelists held a robust discussion around the need to build and strengthen their relationships to further good governance and accountability, and emphasised that this did not mean they had allegiances. The Commissioner reiterated that relationship building with stakeholders is important ICO work but ultimately our independence is crucial to the integrity of our office and our allegiance is to the PATI Act at all times.

The ICO team also had the opportunity to participate in an intensive training, 'Advancing the Ombudsman's Impact, Role, Service and Performance', facilitated by Dr. Victor Ayeni, a well-respected international scholar and lecturer on oversight bodies. The ICO team's key takeaways included reassessing our current tool sets and skills



that we use in our day-to-day work, as well as considering practical ways to ensure that we are a modern, client-focused and effective organization. The training afforded the ICO team the opportunity to learn from highly-respected decision-makers from various public oversight bodies throughout the region. Our roles may be different, but one thing is clear: A competent team with adequate resources, carefully managed collaborations, and operating within a strong framework creates an oversight office that is prepared to effectively carry out its mandate. This training provided the ICO team with clear insight into how we can be impactful in our work and leaders in promoting cultural change.