Information Commissioner's Office

MONTHLY ROUNDUP

Volume IV, Issue 3 APRIL 2021

WELCOME

In her 2020 Annual Report, the Information Commissioner highlighted that more and more Bermudians and residents are exercising their right to make PATI requests. Bermuda saw a 27% increase in PATI requests made in 2020, compared to 2019. Why does this matter? The growing use of the PATI Act indicates that it is an established and important right for all Bermudians and residents. Some highly visible PATI requests made by the media were widely reported on in the press. For other PATI requests, individuals took the initiative to learn more about matters affecting them, their family, their business or their community. Making a PATI request is a simple step and an empowering action. As one person at a time makes a PATI request asking for access to public records, their action may lead to greater accountability of public bodies to the public. Ultimately, public policies and decisions that are enacted by public decision makers must stand the test of transparency and accountability. If the public chooses to engage, the PATI Act offers a tool to learn about what an individual wants to know.

PATI rights are critical to leveling the playing field between the public and public authorities. Importantly, when amendments to these rights are considered, the Information Commissioner urges robust public consultation. To this end, tabled with the Commissioner's 2020 Annual Report, was her *Report and Recommendations on the Implementation of the PATI Act 2010*. In the upcoming year, the ICO will engage with all stakeholders to encourage, discussion, critique and considerations of these recommendations. The Information Commissioner encourages meaningful, broad and transparent consultation and dialogue for any legislative changes to the PATI Act because they impact Bermudians and residents' right to access public information. A strong public access to information framework benefits all of Bermuda by supporting effective and efficient public decision-making through public accountability.

"The PATI Act strikes a careful balance between the need to maintain confidentiality and the requirements for disclosure of public records. Ultimately, the beneficiaries of this legislative framework are Bermudians and residents."

Gitanjali S. Gutierrez, *Looking Ahead*, 2020 Annual Report

CLICK the link to watch the Information Commissioner's recent interview with David Fox of Bermuda Broadcasting Company

IN THIS ISSUE:

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- ICO monthly recap: Statistics for the ICO cases
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Information Commissioner's 2020 Annual Report now available! Download your copy *HERE*

Highlights of the 2020 Annual Report include:

- Bermudians and residents made 116 new PATI requests in 2020, which is a 27% increase compared to the number of PATI requests made in 2019.
- 48% of public authorities' initial responses in 2020 to a PATI request granted access in whole or in part to the public records.
- The ICO received 21 new applications for an independent review by the Information Commissioner.
- 17 decisions were issued as a result of independent reviews by the Information Commissioner in 2020.
- 8 Monthly Roundups published, which discussed Information Commissioner's decisions, public awareness initiatives and topics of interest with access to public information both locally and globally.
- 4 new public awareness videos released.
- 9,100 engagements with the ICO's social media posts and over 192,300 reaches with its successful social media campaigns.
- 67 email, phone and visitor enquires logged by the ICO officers.
- 80% of the public believes that creating and enforcing the PATI Act is a very important public investment.
- 114 individuals representing 42 different public authorities attended the Information Commissioner's virtual Quarterly Briefings for public authorities.
- 97% of public authorities submitted their 2020 ICO Annual Return. This Return requires public authorities to report to the ICO their 2020 PATI statistics and the status of their compliance with the requirements of the PATI Act to proactively publish certain information, including the details of contracts for goods or services with a total value of $50,000 or more.

Tabled with the 2020 Annual Report was the Information Commissioner's Report and Recommendations on the Implementation of the PATI Act 2010, as required by the PATI Act. Over the upcoming months, the Information Commissioner will engage with stakeholders to discuss these recommendations. Copies of this and related documents are available on the ICO website **HERE**!

Information Commissioner's Office ICO

I WANT TO KNOW too!

ICIC 2021 CONFERENCE - OPEN PUBLIC SESSIONS

The International Conference of Information Commissioners (ICIC) will be hosting open sessions for the public during their 12th International Conference held during the upcoming months. The open sessions are available to all members of the public as online webinars and workshops and will be available through the ICIC's YouTube channel. Registration is free.

The ICIC's webpage states the following:

> "The webinars aim to provide participants with dialogue and reflection on some of the most important topics related to the right of access to information. It will be marked by appreciating the diversity of opinions and points of view, with representatives from academia, the public sector and the private sector. More than offering unilaterally the transmission of information or knowledge, the event will seek to encourage dialogue, discussion and the development of critical reasoning, being free and open to all and all those interested in the proposed themes."

- Webinar #1: Transparency and Trust in Pandemic Times, 26 May 2021
- Webinar #2: Blurred Boundaries in Access to Information: Home Office and Public Records Management, 30 June 2021

Full conference details are available on informationcommissioners.org

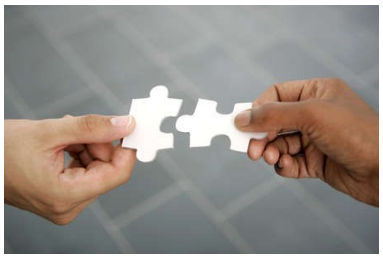
SAVE THE DATES

Information Commissioner's *Virtual* Quarterly Briefing
Thursday, 17 June 2021
10:00am - 11:00am
Topic: Information Commissioner's *Report and Recommendations on the Implementation of the PATI Act 2010*.
ICO Briefings are for public authorities only.
Registration details will be sent directly to them.

International Conference of Information Commissioners (ICIC)
12th Annual International Conference
26 May 2021 & 30 June 2021

APPLYING THE PRINCIPLE OF INTEGRITY IN THE INFORMATION COMMISSIONER'S REVIEWS

The previous Investigator's Insights discussed the principles of independence and fairness, which guide the Information Commissioner and her office in performing its work. This Investigator Insight discusses the final, but equally important, principle applied by the Information Commissioner and her staff in conducting the reviews of public authorities' decisions on PATI requests: Integrity.



The PATI Act gives the Information Commissioner robust authority to conduct independent reviews of public authorities' responses to PATI requests. For example, the Information Commissioner has the power to issue summonses seeking information or records. Each decision that she issues is the result of an independent review that she must conduct under the PATI Act. Once the Information Commissioner files a decision with the Supreme Court, it is legally binding.

Adherence to the principle of integrity is particularly important when the Information Commissioner and her office exercise this authority. In practice, this means the Information Commissioner makes objective, evidence-based decisions that apply the PATI Act and the ICO's policies to factual information. This is why, when conducting her independent reviews, the Information Commissioner requests specific records and verified information from public authorities. For example, when assessing the reasonableness of the searches conducted by public authorities, the Information Commissioner always verifies the searches. This is accomplished by either asking for documentation of the searches or, at times, being present during the searches for particular records.

If in response to a PATI request, a public authority claims the public cannot see certain records, the Information Commissioner has the authority to instruct that public authority to give her access to inspect the withheld records, as part of her independent investigation. This allows the Information Commissioner to review the content of the withheld records. Based on what she can verify, she has the authority and responsibility to decide whether the public authority's refusal to disclose the records was justified. It is important that the public and public authorities understand that the Information Commissioner's decisions cannot be based on assumptions or unverified claims.

At times withheld records responsive to particular PATI requests might contain sensitive and confidential information. Public authorities may be reluctant to share these records privately with the Information Commissioner. This is understandable. Public authorities, however, should be comforted by the fact that section 53 of the PATI Act requires the Information Commissioner and her staff to maintain confidentiality of information received during the Information Commissioner's independent reviews. Guided by the PATI Act and the principle of integrity, the Information Commissioner and her staff have a duty and responsibility to not share any confidential information or withheld records with any external parties.

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ICO INVESTIGATOR'S INSIGHT

APPLYING THE PRINCIPLE OF INTEGRITY IN THE INFORMATION COMMISSIONER'S REVIEWS...cont.

Another manifestation of the principle of integrity is that the Information Commissioner and ICO officers fulfill their duties according to the requirements of the PATI Act and without favour, partiality or self-interest. One practical example of how this is achieved in the Information Commissioner's reviews is the ICO's Register of Interests Policy, which creates an internal requirement to declare conflict of interests. The PATI Act does not have any provisions requiring the Information Commissioner or her staff to do so. However, to protect the integrity of the review process and avoid any real or perceived conflict of interest, the Information Commissioner and her staff will recuse themselves even when the parties do not raise any claim on conflict of interests. As an example, given her previous work advocating the rights of men detained at Guantanamo Bay, the Information Commissioner recused herself from the reviews of public authorities' decisions on PATI requests for records relating to the four Uighur men relocated from Guantanamo Bay to Bermuda. This was a proactive position taken by the Information Commissioner, ensuring the integrity of both her office and the decisions associated with this matter was protected.

The principle of integrity is closely intertwined with the principles of fairness and independence. By applying the principle of fairness (by giving the parties the opportunities to have their views heard), the Information Commissioner strives to reach objective and evidence-based decisions. Adhering to the principles of independence and integrity, in turn, strengthens the fairness of the processes within the ICO and the Information Commissioner's decisions. With all three principles collectively guiding the Information Commissioner's independent review process, her decisions give the public confidence that their right to know is being protected and public authorities confidence that the requirements of the PATI Act are applied fairly to their work.

ICO STATISTICS AS OF 30 APRIL 2021

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……...163	Closed: Decided ……..……..….79
Pending investigations ..……37	Closed: Resolved ……..……20
Applications pending validation ……0	Closed: Abandoned ……..……...7
	Closed: Invalid ……..…… 20

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