Information Commissioner's Office

MONTHLY ROUNDUP

Volume III, Issue 2 APRIL/MAY 2020

WELCOME!

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

"When the crisis subsides and we return to our routines, our community will have the opportunity to reflect back on the outcome of the decisions made by the Government today. Bermudians and residents may praise the Government's response as life-saving or, alternatively, critique it as an overreaction. Critically, this will be a dialogue based on engagement. One in which the Government has endeavored to be as transparent as possible while the public is evaluating Government's decisions from an informed and involved perspective."

- "Looking Ahead", Information Commissioner's 2019 Annual Report

Lockdown. Testing. Face masks.
Quarantine. Curfews. Unemployment payments.
Online shopping. Curbside pick-up. Home learning.
Physical distancing. Phased reopening. Protests.

Bermuda as a community is navigating through a pandemic to the best of our ability. Unprecedented changes to how we are going about our day-to-day tasks has caused us to adjust our lives and routines. Every decision that the government, businesses, families and individuals make during this time is based on the information available to us.

Information is powerful.
Public access to information is a powerful right!

Public data, policies and resources shape what is happening now and influence what Bermuda will look like tomorrow. Creating, sharing and understanding information is a critical catalyst for influencing change. The PATI Act exists so that Bermudians and residents of Bermuda can ask for public information. The PATI Act gives you the right to be informed about, involved and included in topics that matter to you. Your right to ask is available whenever you need to strengthen your opinion, your view, your cause or your trust.

Just like the right to vote, your rights under PATI are powerful - but only when you USE them!

You (Bermudians and residents) must use the rights under the PATI Act to make them powerful. Because of the PATI Act, knowledge is a right. Be informed about, involved and included in public decisions and activities that affect you.

What do you want to know?
Ask! Make a PATI request.

DECISIONS ISSUED

In April and May 2020, the Information Commissioner received 1 new application and issued 1 decision. Highlights from the decision are below.

When a public authority receives a PATI request, what locations should be searched for possible responsive records?

The PATI Act only requires public authorities to conduct a search that is reasonable. In **Decision 04/2020**, Cabinet Office, the Acting Information Commissioner explains that the public authority has to show that it took all the steps which a rational and fair person would expect to have been taken, under all circumstances, to locate the responsive records. The circumstances of each case dictate what is reasonable.

In **Decision 04/2020**, the Acting Information Commissioner considered the reasonableness of the Cabinet Office's search in response to a PATI request for its records of correspondence about the four Uighur men who arrived in Bermuda in June 2009. The search question was considered because the Cabinet Office refused the PATI request on the basis that the responsive records did not exist or could not be found.

The Acting Information Commissioner concluded that the Cabinet Office's initial search was not reasonable because it did not search its secure shared drive, even though it was identified as a potential location. However, during the ICO's review, the Cabinet Office took additional steps, which were verified by the ICO. The Acting Information Commissioner did not require the Cabinet Office to take further steps as she was satisfied that it has now met the reasonable search requirement.

ICO Statistics as of 31 May 2020

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……..135	Closed: Decided ……..…….….63*
Pending investigations ..……31	Closed: Resolved ……..……..15
Applications pending validation ……0	Closed: Abandoned ……..…….. 7
	Closed: Invalid ……..…… 19

**One case in pending judicial review*

Information Commissioner's 2019 Annual Report now available!

Download your copy *HERE*

Highlights of the 2019 Report include:

- 88% of the public continue to believe that the right to access public records under the PATI Act is important.
- Public authorities received 91 new PATI requests in 2019.
- Public authorities granted access in whole or in part to public records in 53% of their initial responses to a PATI request.
- There was a 63% decrease in refusals of PATI requests because the public authority could not find the records, compared to the previous year.
- The Information Commissioner received 36 new applications for an independent review.
- There was a 169% increase in decisions issued by the Information Commissioner, compared to the previous year.
- The Information Commissioner delivered her first International Right to Know Day Declaration.

The Information Commissioner's 2019 Annual Report also analyses the Information Commissioner's reviews from 2015-2019, the first five years of the PATI Act. Most significantly, individuals seeking a review by the Information Commissioner have been evenly divided—50/50—between the media and the general public. Although high-profile PATI cases by the media have received widespread attention, this figure makes clear that Bermudians and residents are quietly and regularly using their PATI rights.

SAVE THE DATE

Information Commissioner's First *Virtual* Quarterly Briefing

Tuesday, 23 June 3:30pm - 4:30pm &
Thursday, 25 June 10:00am - 11:00am

Topic: *PATI & The New Normal*
We will discuss handling PATI requests during the Government's phased reopening & remote work and public records.

Registration is limited. RSVP details will be sent directly to public authorities.

I WANT TO KNOW too!

Information Commissioner's Office

WHAT IS THE ICO REVIEW LIKE DURING LOCK-DOWN?

Transitioning to a remote work environment, while adapting to an unprecedented global pandemic, poses challenges for everyone in different forms. With an independent IT infrastructure and clear leadership, the ICO team was able to transition quickly and efficiently in response to COVID-19. As a small team, we are nimble. Admittedly, some of our functions have been impacted: our responses might be delayed; speaking by phone might require advance scheduling; and verifying searches of hard copy records might be on hold. But overall, the ICO review team has continued to effectively provide our core service with little interruption.

Every day, this team receives and handles confidential and sensitive information. The Information Commissioner continues to ensure that her staff is compliant with their obligation under PATI to maintain secrecy, despite having to work remotely.

Unprecedented times can encourage innovation while ensuring core functions and safety are maintained.

The Information Commissioner established a clear protocol with the expectations and requirements for working remotely for the ICO team. The protocol includes no hard copy or printing of case files or materials at home; electronic case file records must not be copied onto any personal devices; work-related phone calls must be made in private behind closed doors; remote computers must be logged off of when stepping away; and remote screens must be locked when unauthorised persons are present. Virtual meetings arranged by the ICO—either internal or with public authorities or PATI requesters—are conducted on an encrypted platform to ensure security.

Our work revolves around records and communication about those records. Our progress could easily have been dampened without full access to our landline phones, our high-capacity scanner/printer, and larger computer screens. To ensure business continuity and security, we connect directly to our office computer system and office software with an encrypted platform. This is important because it allows the ICO team to access all of our electronic files and eliminates any need to copy records onto thumb drives or to rely on lesser-quality alternatives.

We are embracing technology and incorporating tools such as screen-sharing when verifying public authorities' searches for electronic records, which normally we do in-person during a site visit. This solution was crucial because many reviews require us to assess whether an authority has taken reasonable steps to locate the records the applicant has requested. Technology has allowed us to fulfill this important duty, even while sheltering in place.

Informally staying in touch with our colleagues also greatly enriches our thinking about progressing reviews. Yet isolation happens easily when we can no longer stop by someone's desk or dial their work extension. To solve this problem, the ICO is mimicking the corner office chat through secure online meeting rooms, including ones we can enter into as needed for questions and conversations.

Information Commissioner's Office

We share our thanks to public authority members, applicants and our IT support for easing this transition.

I WANT TO KNOW too!

SOCIAL JUSTICE & PUBLIC ACCESS TO INFORMATION

Social justice movements are in the spotlight! Bermudians and residents are involved in actions addressing racial equity, domestic violence, children's rights, climate change, LGBTQ equality and immigration. As the activism continues to grow in Bermuda, PATI rights are a powerful tool for supporting the truth of any injustice.

In efforts to achieve social justice, Bermudians and residents can use their PATI rights to seek factual public information that documents systemic injustices or inequalities. In many social justice movements, individuals may share their opinions, life experiences and anecdotes about unfairness. Public information is crucial for placing these individual experiences into a broader, data-driven understanding that leads to concrete solutions. This has occurred in many countries, and a few examples include:

- In Jamaica, campaigners gathered information about the conditions in government homes for the protection and care of vulnerable children in need. They produced a report documenting the mistreatment of children and poor conditions, which compelled the government to take corrective steps. Learn more **here**.
- In New York City, advocates used public access to information to establish that 4 out of every 5 reported stops as part of the police's 'stop and frisk' program from 2014-2017 were of Black or Latino people. This led to legal challenges and reforms to this discriminatory police practice. Learn more **here**.
- In the UK, the *Guardian* newspaper used public access requests to document the widespread failure of 131 universities to respond adequately to staff and students' complaints of racial discrimination. The breadth of the data supported arguments for the need to address endemic racism within UK universities. Learn more **here**.
- In the UK, the public learned more information about the government's funding of the Slavery Abolition Act 1833, including how the compensation payable under the Act was funded and that the money borrowed to fund the compensation programme was fully repaid in 2015. Learn more **here**.
- In Uganda, community activists obtained information that local district leaders had distributed development resources to themselves, without any documentation. The activists exposed corruption in the local government that led to an arrest and the redistribution of resources to the rightful beneficiaries of the development program. Learn more **here**.

Closer to home, Bermudians and residents may use their PATI rights to seek records that show that their personal experience is reflective of a systematic injustice in need of a systemic solution. Or PATI may be used to identify a policy or other document that sets out the details of an unequal approach to public services. Understanding and using PATI rights enable Bermudians, residents and the government to engage in dialogue while referencing broad factual information, rather than competing opinions.

What do you want to know?
Ask! Make a PATI request.

Information Commissioner's Office

I WANT TO KNOW too!

ICO COVID-19 UPDATE

In response to the COVID-19 pandemic, the Information Commissioner took the recommendations of health officials and moved the ICO to an alternative remote work environment as of 17 March 2020. While our physical office is open by appointment only, the ICO is 'open' during regular business hours and the public and other stakeholders may reach us by phone or email. These measures were taken to protect the health and safety of our officers, while ensuring that the Information Commissioner and the ICO remained focused on promoting and enforcing public access to information. The ICO's physical office will be open for our regular operating hours during Phase 3 of Bermuda's reopening.

The ICO continues to progress the Information Commissioner's reviews and the Information Commissioner continues to issue decisions. Our Investigation Officers are conducting meetings with public authorities by phone and video conferencing, as well as maintaining communications with applicants. Some delays due to COVID-19 are to be anticipated, and may be inevitable with cases requiring searches of hard copy records. The ICO will continue to enforce the public's access to public information, taking a practical approach to its regulatory activity during COVID-19.

If the public or other stakeholders have questions about rights under the PATI Act, you may contact the ICO by calling 543-3700 or emailing us at **info@ico.bm**.

If your school, community or work group would like to schedule a remote workshop or presentation with the Information Commissioner to learn more about using your PATI rights or the benefits under the PATI Act, please contact us!

The ICO is also fulfilling its important accountability responsibilities to the public. The Information Commissioner submitted her 2019 Annual Report to Parliament on 31 March 2020, as required by section 58(1) of the PATI Act, and it was tabled in late May by both Houses of Parliament. The ICO is also nearing completion of the Auditor General's independent audit of our 2018-2019 budget.

We thank our stakeholders for their understanding during this challenging time. We remain committed to the mandate of the Information Commissioner to uphold the PATI Act.

Information Commissioner's Office
Maxwell Roberts Building, 4th Floor
One Church Street
Hamilton HM11
441 543 3700
info@ico.bm
www.ico.bm
www.facebook.com/icobermuda

Information Commissioner's Office iCO