Information Commissioner's Office

MONTHLY ROUNDUP

Volume III, Issue 3 JUNE 2020

WELCOME!

The Information Commissioner's Office (ICO) welcomes you to the June 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.

June 2020 was a busy month for the ICO. As Bermuda emerges from Phase 4 of the Covid-19 pandemic, our office has assisted a steady stream of potential and current PATI requesters to understand and exercise their rights under the PATI Act. Members of the public want to know how to use their PATI rights so they can understand what, why, how, and by whom public decisions are being made. They want to know more about the decisions that affect them, their families and our community as a whole.

Public information, at the fingertips of Bermudians and residents, empowers those who choose to ask for it and ultimately use it. PATI requests can help Bermudians and residents to assess programs funded by the public purse and propose evidence-based solutions to issues affecting them and the community. When PATI requesters exercise their rights under the PATI Act, and as public disclosures continue, Bermuda as a whole benefits. In support of the public's right to know, rest assured, the Information Commissioner is committed to enforcing these rights.

"The PATI Act's potential for strengthening good governance will only be realized through its regular use by Bermudians and residents of Bermuda making PATI requests." - Excerpt from Information Commissioner Gutierrez's 2019 International Right to Know Day Declaration

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"Understanding and using PATI rights enable Bermudians, residents and the government to engage in dialogue while referencing broad factual information, rather than competing opinions." - Excerpt from the April/May 2020 ICO Monthly Roundup

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DECISIONS ISSUED

In June 2020, the Information Commissioner received 2 new applications and issued 1 decision. Highlights from the decision are below.

How should public authorities handle a PATI request when the PATI Act does not apply to the requested records? Refer to section 4 of the PATI Act.

Under section 4(1), the PATI Act does not apply to certain categories of records. This includes records that were created or obtained by specific public authorities listed in section 4(1)(b) in the course of carrying out their statutory functions.

When a public authority receives a request for records that fall under section 4(1), the public authority is still required to process the request. It should issue initial and internal review decisions refusing the PATI request under section 4(1) of the PATI Act. If the requester is not happy with the internal review decision, they can ask for an independent review by the Information Commissioner. The Information Commissioner will then determine whether the public authority's reliance on section 4(1) is appropriate.

In **Decision 05/2020**, Human Rights Commission, the Information Commissioner considered a refusal by the HRC of a PATI request for the minutes of the meetings of its Commissioners. The Information Commissioner upheld the HRC's refusal because she was satisfied that the requested minutes were created by the HRC in the course of performing its statutory functions under section 14 of the Human Rights Act 1981.

The PATI Act makes a clear distinction between a public authority's records pertaining to its statutory functions and its administrative records. In **Decision 05/2020**, the Information Commissioner also agreed with the HRC that the relevant minutes requested in the PATI request do not relate to its general administration and therefore are not administrative records. This matters because administrative records of all public authorities fall within the scope of the PATI Act under section 4(2) and could be subject to public disclosure.

In **Decision 05/2020**, the Information Commissioner emphasized Parliament's determination that public access was not appropriate for records created or obtained by the public authorities listed in section 4(1) in the course of carrying out their statutory functions. Instead, the performance of most of these authorities' functions is subject to public accountability by other means, such as judicial review, which preserves their independence and avoids external influence over their functions.

A reminder to public authorities: If you receive a PATI request for records falling under section 4(1), you must still give the PATI requester the initial and internal review decisions explaining why your public authority is refusing the request.

JUDICIAL REVIEW AGAINST INFORMATION COMMISSIONER DISCONTINUED – BERMUDA HOSPITALS BOARD DISCLOSES COST RANGE FOR EXECUTIVE TEAM POSTS

In December 2019, the Bermuda Hospitals Board (BHB) initiated a judicial review of the Information Commissioner's **Decision 24/2019** and order to disclose the total cost range of its Executive Team member posts for the Financial Year 2015/16 in bands of $10,000. This judicial review marked the first time a public authority brought a judicial review challenge against an Information Commissioner's decision and order to disclose records under the PATI Act. In response, the Information Commissioner sought to enforce her decision on behalf of the public.

In June 2020, the BHB and the Information Commissioner agreed to discontinue the legal proceedings. The BHB agreed to fully comply with the order and disclosed the records on 11 June 2020.

"Disclosure of the costs for posts paid for with public money furthers the accountability and transparency purposes of the PATI Act. Bermudians and residents have the right to know how their money is being spent and whether it is spent efficiently, effectively and appropriately," said Information Commissioner Gutierrez. "As we move forward, public authorities should expect heightened public scrutiny of records involving public money, especially during this period of economic hardship. I encourage public authorities to champion transparency. Proactively disclosing salary or compensation ranges and disclosing other public spending information are practical examples of how public authorities can do this."

This disclosure also demonstrates to the public that the Information Commissioner will defend her decisions for their benefit. "If a public authority challenges my decision ordering the disclosure of records, the burden will not fall on the individual PATI requester to defend the decision", explained Information Commissioner Gutierrez. "It is important for PATI requesters to know that, as Information Commissioner, I will robustly defend my decisions for the benefit of both the requester and the broader public."

- A full copy of the Press Release is available at **www.ico.bm/ico-press-releases**
- A full copy of Decision 24/2019 is available at **www.ico.bm/decisions**

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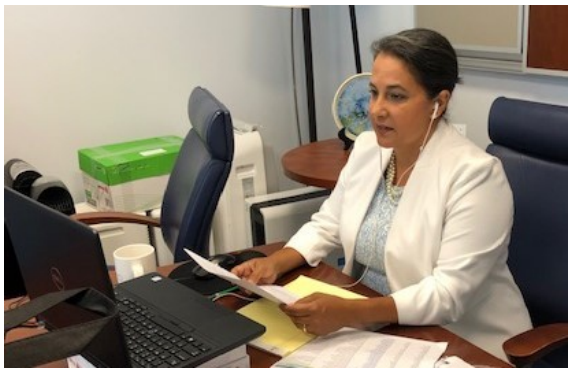
INFORMATION COMMISSIONER'S JUNE 2020 QUARTERLY BRIEFING



The Information Commissioner shifted the first 2020/21 Quarterly Briefing to a virtual delivery. Two sessions on "PATI & the New Norm" were held on 23 and 25 June 2020. A total of 39 attendees from 14 different public authorities participated. The Information Commissioner discussed the practical challenges of handling PATI requests during a crisis and while working remotely. She talked about issues relating to statutory time frames, receiving requests, retrieving records, and maintaining confidentiality of requesters' identities. Good practices for managing public records and remote work environments were also discussed.

The virtual format changed the nature of the briefing. It allowed more discussion and opportunity for attendees to ask interactive questions with the ICO team. The discussions involved the unique challenges that public authorities may face while transitioning into and out of remote work environments, and attendees offered their insights on topics such as videoconferencing, record management policies, communicating with PATI requesters, and managing their PATI-related duties.

ICO Statistics as of 30 June 2020

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……..137	Closed: Decided ……..…….…64*
Pending investigations ..……32	Closed: Resolved ……..……..15
Applications pending validation ..……..0	Closed: Abandoned ……..…….. 7
	Closed: Invalid ……..…… 19

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LEARNING MORE: PUBLIC ACCESS TO INFORMATION AND CRIME

In the ICO's new 'Learning More' series, we focus each month on how PATI rights are effective tools that enable Bermudians and residents to learn more about important topics of the day.

There is no doubt that criminal activity and its aftermath impact Bermuda's social fabric. The impact of criminal activity touches every social group across Bermuda, whether it is a loss of property or, in more serious cases, loss of life.

No matter the outcome, for every criminal act, there is a lasting impact on individuals, families, communities and Bermuda's reputation as a friendly and safe place in the middle of the Atlantic. Many indicators also suggest that the negative impact of criminal activity disproportionately impacts certain populations, such as young black men. Bermuda's communities routinely call on government, police, churches and charities to take action to help (or punish) those who commit crimes, to comfort the families left recovering in the aftermath, or to address the underlying causes of inequity or social unrest that leads to criminal activity and a loss of hope.

What does using the PATI Act have to do with crime?

Bermudians and residents may need to learn more about this topic for many personal reasons. They may want to suggest, assess or improve existing violence reduction programs. They may seek information to see whether domestic violence intervention programs exist or are adequately funded. Perhaps a student studying public policy wants to understand why certain decisions were made about crime prevention. Bermudians or residents may personally want to better understand the impact of criminal activity upon particular communities, such as a neighborhood or demographic group.

When discussing solutions to address criminal activity and its impact, objective and data-supported approaches strengthen proposals and ideas. PATI requests can be an important tool to learning more about issues such as crime. Bermudians and residents who use the PATI Act to request crime-related records, may have their questions answered by disclosure of public records under the PATI Act.

Bermudians and residents using their rights under the PATI Act can benefit everyone in Bermuda!

With PATI, if you are a concerned community member, you can strengthen your personal views or experience with data and documentation. You have an opportunity to show that your perspective or experience reflects a larger or systemic pattern.

*** Continued on next page ***

LEARNING MORE: PUBLIC ACCESS TO INFORMATION AND CRIME, *cont.*

It is also important to note that when Bermudians or residents make a PATI request, the requester's motivation and reasons do not need to be disclosed. PATI requesters can equip themselves with the needed information, under the protection of the PATI Act.

Public information is crucial for placing 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 the UK, access to information requests to 41 different police forces showed that 19 of them recorded more calls about domestic abuse in March 2020 (during the Covid-19 lockdown) than in March 2019. Learn more **HERE**.
- In the UK, public data revealed that about one in five rape victim complainants refused to allow police access to their cell phones and as a result the case was closed. Of the police requests to access mobile phones, 19% belonged to children. Learn more **HERE**.
- In Scotland, the Central Enquiry Unit released information about meetings between the Cabinet Secretary for Justice and victims of crime or victim support groups. Learn more **HERE**.
- In Cayman Islands, the Ombudsman enforced the access to information law to order the Office of the Director of Public Prosecution (ODDP) to disclose the identity of an expert who wrote an important review report of a medical examination of the applicant when she was a minor. The report may have related to criminal issues involving child abuse. The ODDP also was ordered to provide a completely unredacted report directly to the applicant because it was her own medical history. Learn more **HERE**.

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