Information Commissioner's Office

MONTHLY ROUNDUP

Volume III, Issue 6 SEPTEMBER 2020

WELCOME

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

While Bermuda recovered from back-to-back hurricanes and Bermudians prepared to exercise their right to vote, the ICO commemorated International Right to Know Day. Highlights from this year's initiatives included the Information Commissioner's International Right to Know Day Declaration at City Hall and the launch of the ICO's 'I Want to Know!' public awareness video series.

"I think that [the PATI Act] should help people develop stronger opinions rather than just shouting at the mouth. I think what [the ICO] can give people is the information that they need to make sound decisions, and it can give people the information they need to have a better understanding of what is going on around them." – Jamel Hardtman, host of The Daily Hour on The Full 100 Radio

Bermudians and residents play a critical role in holding public authorities to account. PATI rights allow Bermudians and residents to see for themselves how and why decisions are made, how public money is spent and why policies are adopted. PATI requesters may get this information from emails, memos, financial records, statistics, reports and other records.

Mayor of Hamilton The Rt. Wor. Charles R. Gosling, JP, Town Crier Mr. Ed Christopher, Information Commissioner Gutierrez and the ICO team.

The ICO continues to encourage Bermudians and residents to exercise their PATI rights. Be informed. Be included. Be involved.

IN THIS ISSUE:

- ICO's International Right to Know Day initiatives
- Monthly statistics for ICO cases
- *"Learning More" series* - Public access to information & the environment
- "*Tips Corner*" for public authorities and PATI requesters

I WANT TO KNOW!

INTERNATIONAL RIGHT TO KNOW DAY 2020

The Information Commissioner delivered her 2020 International Right to Know Day Declaration at City Hall on Monday, 28 September, as part of the ICO's commemoration of International Right to Know Day.

International Right to Know Day was established on 28 September 2002, by campaigners from around the world to mark the creation of the Freedom of Information Advocates Network. Since then, on 28 September each year, Information Commissioners, advocates, human rights organisations, the media, public bodies, and the public celebrate the right to access information and the principles of openness, accountability and transparency.

The purpose of International Right to Know Day is to increase individuals' awareness of their right to access information held by the government and other public authorities.

On this occasion, the Commissioner stated, "During this unprecedented time in Bermuda's history, Bermudians and residents expect their government and public authorities to be fully transparent and uphold good governance. Bermudians and residents are making their voices heard. With each PATI request submitted, Bermudians and residents are demonstrating that they expect to be involved, included and informed in public decision making that affects their lives."

Read the Commissioner's full Declaration HERE
Read the full Press Release HERE

CHECK THIS OUT!

On International Right to Know Day, Commissioner Gutierrez stopped by The Daily Hour on The Full 100 Radio to talk about the importance of PATI rights in Bermuda and answered a variety of questions about the PATI Act.

Watch the full interview HERE

The Daily Hour Host Jamel Hardtman, Co-Host Carla Zuill and Information Commissioner Gutierrez

Information Commissioner's Office

I WANT TO KNOW too!

2ND ANNUAL INFORMATION COMMISSIONER'S AWARD

The annual Information Commissioner's Award honours individuals who have excelled in their role as Information Officers for public authorities in one or more of the following areas: Communication, Innovation, Leadership and Service. This year, two Information Officers received the Information Commissioner's Award: Mr. James Needham, of the Land Valuation Department; and Mrs. Debra Goins-Francis, of the Bermuda Hospitals Board (BHB).

Information Commissioner Gitanjali Gutierrez stated, "A committed and supported Information Officer can be the catalyst for tremendous positive influence on the culture within their public authority. In addition to working well with PATI requesters, this year's award recipients are also change leaders who are effectively guiding their public authorities through the process of becoming more open and accountable to the public".

Information Commissioner Gutierrez, Information Officer Mr. James Needham and Mrs. Diane Elliott, Director of Land Valuation Department

Mr. Needham's leadership, consistent communication and dedicated service have influenced his colleagues to recognise the value of the PATI Act and the importance of strengthening the Department's transparency. Mr. Needham's hard work to ensure that the Department makes proactive disclosures, along with his diligence and openness when working with PATI requesters or anyone seeking information from the Department, has made the Department more transparent to the public in concrete ways.

Mrs. Debra Goins-Francis has been the Information Officer for the BHB since the PATI Act became operational. She continues to inspire her colleagues to adhere to the principles of accountability, transparency and openness with the public at a time when the BHB was under tremendous stress from the COVID-19 pandemic. Her steadfast commitment to the good governance principles underlying the PATI Act have benefited the BHB and the public it serves.

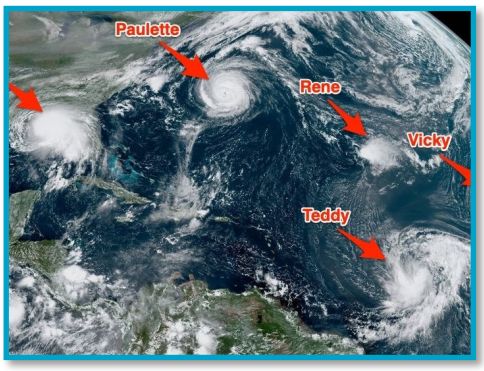
Information Commissioner Gutierrez, Information Officer Mrs. Debra Goins-Francis and Dr. Michael Richmond, BHB CEO

Read the full Press Release HERE

LEARNING MORE

PUBLIC ACCESS TO INFORMATION & THE ENVIRONMENT

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.



The environment continues to be a top concern for people in Bermuda and around the world. We have witnessed wildfires ravage the western coast of the United States, plastics threaten the health of ocean ecosystems and pollution levels dramatically drop in major international cities during COVID-19 lockdowns. September 2020 was one of the busiest Atlantic hurricane seasons on record, culminating with Hurricane Paulette in Bermuda. Incredibly, on 18 September 2020, a record of five Atlantic tropical storms formed in one day.

Beyond increasing hurricane activity, Bermuda faces other environmental concerns. Case in point: the raised design of Bermuda's new airport reflects the need to prepare for the rise of ocean levels due to global warming. Bermuda continues to navigate land use that must balance recreation, habitat preservation and farmland. Bermuda's reef ecosystem remains vulnerable to lionfish, plastics and global warming. The list of environmental threats grows as the human impact on our planet continues at a relentless pace.

What does this have to do with public access to information?

In the face of these challenges, environmental activists have long used public access to information laws to strengthen their advocacy. Environmentalists have used public access to information requests to ensure that public sector developments and land use are sustainable and safe. Neighborhood groups have used these laws to gain access to information and reports from regulators and government to ensure that discharges from local companies are not polluting their air and water. Scientists have sought raw data through public access to information requests to independently verify governments' conclusions about the health of the environment.

As in many countries, environmental groups in Bermuda were some of the early-adapters to using the PATI Act to hold public authorities accountability for decisions that had the potential to negatively impact Bermuda.

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Here's what you may have missed in the previous ICO Monthly Roundups:

- *Education*, August 2020
- *Financial Recovery & Employment*, July 2020
- *Crime*, June 2020
- *Social Justice*, April/May 2020

Information Commissioner's Office ICO

I WANT TO KNOW too!

LEARNING MORE

PUBLIC ACCESS TO INFORMATION & THE ENVIRONMENT, *cont.*

Local and international examples of using PATI laws to further environmental protections include:

- In Bermuda, the Government had planned to build a maintenance yard at Botanical Gardens. Take Back Our Park (TBOP), an environmental campaign group, filed one of the first PATI requests in April 2015 for environmental impact studies as well as studies assessing potential alternative locations for the project. TBOP learned that no studies were on file, and raised concerns that the development was going forward without public consultation. TBOP's campaign influenced a subsequent Supreme Court decision to block the construction. Learn more **HERE** and **HERE**.

- In Bermuda, the Bermuda Environmental Sustainability Taskforce (BEST) made PATI requests for information about a proposal to run All Terrain Vehicle (ATVs) tours in protected areas in the West End. BEST cited the lack of a response to its PATI request as one of the reasons that the proposal should not move forward until the public was more informed. Ultimately, hundreds of objections were made to the proposal and BEST brought a successful legal challenge to prevent any further consideration of the ATV plan without proper consultation and planning approval. Learn more **HERE** and **HERE**.

- In Wales, a disclosure from a public access request revealed that toxic emissions levels fell by up to 47% after speed limits were enforced using cameras to tackle roadside air pollution. This confirmed that the enforcement program was working, and established a valuable example for other areas. Learn more **HERE**.

- In Wales, even though a public access request was submitted, it took over a year before emails were disclosed showing that a council's parks department knew that unauthorised sewage discharges were polluting a local lake. After the public disclosure and the attention that followed, the council committed to addressing the pollution. Learn more **HERE**.

- In the Cayman Islands, the *Cayman Compass* filed a successful public access request and learned that nine out of twelve projects that were exempt from planning permission (and the standard approval processes) were earmarked for community parks. The newspaper then assessed how many projects had been noticed in the official gazette, as required by law. The gazette notices keep the public informed when exemptions from planning approvals are granted. Learn more **HERE**.

Remember, Bermudians and residents have the right to ask under the PATI Act. Knowing more and taking action to get access to the information needed starts with you, Bermudians and residents.

Q&A CORNER WITH THE ICO

This section highlights the ICO's responses to some of the enquiries that it received this month.

I Want to Know about the Government's social media accounts…

Q: Can I ask for records created on the Government's social media, like its Facebook and WhatsApp accounts?

A: Yes. The PATI Act says that a record can be in any form or medium. This includes internet-based records held by public authorities.

I Want to Know about video-call meetings…

Q: When public officers meet via a video-call, for instance using Zoom, what kind of records could I access by making a PATI request?

A: If the authority actually recorded the videoconference, the recording is a record as defined by the PATI Act. Other records could include the participant log and the chat log. Remember that any Bermudian or resident of Bermuda can ask for access to a public record, based on their interests. But the authority has a duty to decide whether parts of the record you ask about should not be released to the public based on an exemption or administrative ground for denying access.

I Want to Know about my personal information…

Q: When records include my personal information, can I use a PATI request to ask for a copy?

A: Yes. A record held by a public authority, even if it largely contains personal information, is a public record under PATI. A PATI requester can ask for a copy of their own personal information. If a PATI requester asks for someone else's personal information, a public authority may apply the exemption for personal information to keep that information confidential. Note that when the Personal Information Protection Act 2016 (known as PIPA) becomes fully operational, the process for getting your own personal information will change.

TIPS CORNER FOR PUBLIC AUTHORITIES & PATI REQUESTERS

This section highlights useful tips about effective ways to participate in a PATI request process.

Tip for Information Officers:

Maintain a complete and organised file about your handling of the PATI request. Consider keeping a copy of the actual records, whether disclosed or withheld, in an accessible file for a certain period of time.

Why it makes sense?

All requesters have a right to ask that the head of the public authority review the initial response given by the Information Officer. Under the PATI Act, requesters do not need to explain why they are not satisfied with the initial decision.

The only requirements are that requesters must ask for an internal review in writing and within six calendar weeks of receiving the initial decision – although the head of the public authority might exercise their discretion to accept a late request. Information Officers can help themselves by being prepared to share their files (or extracts from it) if the head of the public authority receives an internal review request.

Similarly, when requesters contact the ICO, they are not required by the PATI Act to explain to us why they are dissatisfied with the public authority's handling of their request, before we accept that their application for an independent review is valid. So, when Information Officers keep complete and organised files, it serves the work of both the public authority and the ICO.

Kudos to the Information Officer at the Department of Child & Family Services, for being able to demonstrate ways they carefully maintain their PATI request files and stay ready just in case a requester asks for an internal or independent review of their initial decision.

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TIPS CORNER FOR PUBLIC AUTHORITIES & PATI REQUESTERS, *cont.*

Tip for PATI Requesters:

Add reminders in your calendar for you to remember what should happen by when after you make a PATI request. To track your PATI request, keep these in mind:

- Expect an acknowledgement within 5 days after you make a request
- Expect an initial decision, or an extension of time notification, within 6 weeks after you make a request
- After you receive an initial decision (or should have received one), if you choose to, ask for an internal review by the head of the public authority
- After you receive an internal review decision (or should have received one), if you choose to, ask for an independent review by the Information Commissioner

Why it makes sense?

Along with rights come responsibilities. Requesters can miss the opportunity to ask for an internal or independent review if they do not pay attention to what is asked of them. The PATI Act gives both the head of a public authority and the Information Commissioner the discretion to accept a request for a review out-of-time. Requesters should know, though, that they will be asked to explain why their request is late; and an 'oops, I forgot' response may not be enough.

Kudos to those requesters who diligently follow-up with public authorities to ask about the status of their PATI requests if they have not received a decision from them within the six-week requirement.

ICO STATISTICS AS OF 30 SEPTEMBER 2020

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……...142	Closed: Decided ……..……..…..72
Pending investigations ..……..26	Closed: Resolved ……..……..17
Applications pending validation ……1	Closed: Abandoned ……..…….. .7
	Closed: Invalid ……..…… 19

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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