ICO
INFORMATION
COMMISSIONER'S
OFFICE FOR BERMUDA

Contracting with the Information Commissioner

Information for prospective contractors

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Introduction

1. This note provides you with some information about the implications of entering into a contract with the Information Commissioner. It is important to that you read this note and keep it accessible for future reference.

Background

2. The Information Commissioner is responsible for promoting and enforcing the Public Access to Information (PATI) Act 2010 and the PATI Regulations 2014. The PATI Act creates the right to access records held by public authorities. The PATI Act also requires public authorities to make records routinely available. The Information Commissioner's mandate includes encouraging this proactive publication of records. The PATI Act is fully retrospective, and covers existing and future contracts.

3. The Information Commissioner is also a public authority and must fully comply with the PATI Act.

4. The right to access records is subject to a number of exemptions and a small number of exceptions in the PATI Act. The Commissioner does not, for example, have to release records where its disclosure would be an actionable breach of the duty of confidence.

5. In some instances, records concerning commercial interests may be withheld from disclosure only if you have not been informed prior to supplying the information that it belongs to a class of information that will be made available to the general public. In this note, we explain what information the Information Commissioner will make available to the public.

6. Even where an exemption does apply, the record may still need to be disclosed if it is in the public interest to do so.

What this could mean for you

7. The PATI Act will affect you in two main ways if you enter into a contract with the Information Commissioner:

    a. The Information Commissioner cannot accept **confidentiality clauses** in a contract which you might normally include in your standard contracts with other private sector organisations.

    b. Details about your dealings with the Information Commissioner (including details of the contract you enter into with the Commissioner) may be published or released in response to a **request for records**.

8. The Information Commissioner's Office publishes a registry of the value of all contracts executed by the Information Commissioner, which includes the vendor, description of service, value of the contract, and its commencement and expiry date.

Confidentiality clauses

9. The Information Commissioner will not usually accept standard confidentiality clauses in a quote, tender, or contract.

10. You may want to provide information to the Information Commissioner only on the basis that it will remain confidential and will not be disclosed if a request for records is made for it. The Information Commissioner, however, can agree to accept information in confidence only where the information is specifically exempt from disclosure under the PATI Act.

11. By this note, we are giving you notice that the Information Commissioner treats records related to her accountability for spending public funds as a class of records and information that is subject to disclosure. This includes records related to quotes, tenders, and contracts received by the Information Commissioner.

12. If you want the Information Commissioner to treat information in a quote, tender, or contract as confidential, please contact us to discuss what this means before sending your information to us. We will explain how to alert the Commissioner **at the time of providing the information**. You will need to clearly explain what information you would like held confidential and how it falls within an exemption under the PATI Act.

13. If the Information Commissioner accepts that some of the information should be held confidentially, it may be moved to the annex of any quote, tender, or contract to make its special status clear.

Request for records about you

14. The Commissioner may receive a request for a record containing information she holds about her dealings with you. For example, she may be asked about the contract, any quotes or tenders submitted, correspondence between you and the Commissioner, or notes of meetings.

15. In most cases, the Commissioner aims to respond to any request by disclosing the record, particularly when the record relates to her accountability for spending public funds.

16. As set out above, the PATI Act does allow the Commissioner to refuse to provide access to a record in response to a request, but only in limited circumstances. For example, a record may be withheld from disclosure if it contains trade secret information and falls within the exemption for trade secrets.

17. The Information Commissioner will provide you with notice, consistent with the PATI Act, if a request for records has been made and she intends to disclose 'personal information', 'information received in confidence', or 'commercial information' that you provided or that relates to you.

18. If you did not identify your information as information submitted in confidence or commercial information at the time of your dealings with the Information Commissioner, it will not fall within these exemptions. This is particularly true because we are giving you notice that this class of information will usually be made available to the public. If you did not tell the Information Commissioner at the time of providing the information that you do not want it disclosed, the Commissioner may not contact you if she receives a request.

19. If the Information Commissioner does contact you, any views you give will be taken fully into account, but it is the Commissioner who is responsible for deciding whether to release the information.

20. Note that even when a record or information does fall within an exemption, the record may still need to be disclosed if it is in the public interest to do so.

Further Information

21. Further information about the PATI Act and the PATI Regulations, and what they might mean for you, can be found on the Information Commissioner's website or you contact us directly (details below).

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