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Information Commissioner's Statement on Access to Information During National Crisis

Bermuda is at an unprecedented time in our history – facing the threat of a pandemic health crisis and in a declared State of Emergency. Daily, the Government is receiving, evaluating and delivering critical information. It has established open communication to ensure that our island responds effectively to the collective need to safeguard Bermuda.

During this crisis, future access to public information and record keeping may not be at the forefront for leadership. Appropriately, their critical focus is on the immediate safety and health of Bermuda.

As the Premier acknowledged last week, when the COVID-19 crisis subsides and we return to our routines, our community will have the opportunity to reflect on the outcomes of the decisions made by Government today. A time will come for the full accounting of the decisions taken and the public funds committed by the Government to safeguard the community. Bermudians and residents may praise the Government's response as life-saving or, alternatively, critique it as an overreaction.

Critically, this dialogue will be based on engagement. One in which the Government has endeavored to be as transparent as possible, and the public is evaluating Government's decisions from an informed and involved perspective. Bermudians and residents will expect a complete understanding of the considerations, data, deliberations and policy decisions in response to COVID-19 that are shaping our future.

Every Bermudian and resident has a right to access public information. The Government and public authorities must ensure that this right is protected by taking appropriate steps now to make a record of decision making and to have in place strong information management practices.

While physical offices are closed, many public officers are working from home and may be using private technology, such as personal telephones or computers. This has been essential for the continuity of public services. At the same time, senior leadership must ensure that public authorities create, retain and properly manage records that document their decisions and activities. For example, meeting minutes should be taken and kept, decisions made over personal WhatsApp or text messages ultimately should be recorded in the public authority's records, and officers must understand what records they should retain.

As Information Commissioner, I commend the Government and public authorities for their proactive transparency during this crisis. Accurate public information and our collective response to it are crucial to ensure that Bermuda emerges from this pandemic as a stable and strong community. I further call on heads of public authorities to provide clear direction and guidance on how public information will be managed during this crisis, not only related to concerns about cybersecurity, but also with future public accountability in mind.

The right to access to public information under the PATI Act is not suspended during this crisis. Nor are public authorities' obligations to comply with the PATI Act postponed. I recognize, however, that the majority of public authorities may not be operating at full capacity. I encourage PATI requesters and public authorities to be understanding, patient and exercise reasonable expectations during these unprecedented times. Public authorities are reminded that, when needed, the PATI Act allows for an extension of time for an initial decision on a PATI request. Heads of authorities also have the discretion to accept internal review requests out-of-time, after the COVID-19 crisis has passed.

The Information Commissioner's Office is available to assist the public or public authorities with any questions about the impact of the current crisis on their PATI rights and obligations.

The right to access public records is more than a keystone for public accountability. It enables our community to reflect on, and understand, how and why decisions and actions were taken. This informs our ability to do even better in future crises. Our continuing growth as a country is only possible when the Government and other public authorities are fully transparent, respect good information management and uphold access to public information.

Gitanjali S. Gutierrez

Information Commissioner

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