Information Commissioner's Office

MONTHLY ROUNDUP

Volume V, Issue III MAY 2022

WELCOME

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

The ICO's Monthly Roundup offers helpful information about PATI rights and practice for both the public and public authorities. In this issue, we take a closer look at the Information Commissioner's recently issued decisions.

The Information Commissioner's next Quarterly Briefing for public authorities will be held on 16 June. For this Briefing we are taking a look at PATI procedures, such as conflicts of interest in PATI decision making, extensions of time and consequences of misidentifying the Head of Authority. If you are involved with PATI work for one of Bermuda's public authorities, speak to your public authority's Information Officer to sign up for this upcoming Briefing.

"Public access to government information is a fundamental prerequisite to a functioning democracy. A democratic system is based on the notion that government legitimacy requires the consent of the governed. To be meaningful, that consent must be informed."

John Podesta,
Former White House Chief of Staff

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DECISIONS ISSUED

During May 2022, the Information Commissioner received ten new applications and issued five decisions. Highlights are below:

Public authorities' failure to meet basic PATI obligations continues.

Each decision issued during May 2022 considered the failure of public authorities to issue an internal review decision within the set timeline. **Decisions 12/2022** to **15/2022** were for the Cabinet Office, while **Decisions 14/2022** and **16/2022** involved the Ministry of National Security Headquarters and Bermuda Police Service, respectively.

Under the PATI Act, public authorities have a basic obligation to meet certain timeframes, including the six -week deadline for issuing an internal review decision. An internal review is the public authority's opportunity to take a 'fresh look' at the PATI request. It provides public authorities with another chance to liaise with the requester to ask additional questions, discuss concerns or, if necessary, seek clarification on the scope of the request.

In **Decision 12/2022,** Cabinet Office, the Acting Information Commissioner considered a PATI request that was originally made to the Ministry of Health Headquarters seeking records relating to the Molecular Diagnostic Laboratory. The request was transferred in part to the Cabinet Office. The Acting Information Commissioner found that the Cabinet Office did not issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act. As a result, the Acting Commissioner ordered the Cabinet Office to issue an internal review decision to the Applicant on or before 6 June 2022.

In its submission to the Information Commissioner, the Cabinet Office expressed concern about the scope of the PATI request. Public authorities are reminded that, if they have concerns with the scope of a PATI request, for example if they find that it is too broad, they should communicate meaningfully with the requester. The **Minister's PATI Practice Code** is an effective tool for both the public authority and the requester to help navigate and resolve these concerns, ensuring that PATI obligations are met and PATI rights are upheld.

In **Decision 14/2022**, the Acting Information Commissioner reiterated her call for public authorities to meaningfully assist or offer to assist requesters to amend their PATI requests, if the authorities find the responsive records to be too extensive. In **Decision 14/2022**, the Applicant submitted a PATI request to the Ministry of National Security Headquarters (Ministry Headquarters) for a Ministerial statement on payments to certain participants in the protest on 2 December 2016 as well as records relating to those

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DECISIONS ISSUED...cont.

payments and the Contingency Fund of the Royal Bermuda Regiment. The Acting Information Commissioner found that the Ministry Headquarters failed to issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act. As a result, the Acting Commissioner ordered the Ministry Headquarters to comply with the requirement to issue a decision on the Applicant's request for an internal review on or before 8 June 2022.

Decision 16/2022, Bermuda Police Service (BPS) touches on the topic of an extension of time at the initial decision stage. The Applicant submitted a PATI request to the BPS seeking records relating to conduct and other matters. The BPS extended the timeline to issue an initial decision, but only after the original timeline expired. The Information Commissioner found that the BPS did not issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act. The BPS issued an internal review decision on the PATI request during the Information Commissioner's independent review. As a result, the Information Commissioner did not require the BPS to take any further action with respect to this Decision.

As noted in the **April 2022** Monthly Roundup about **Decision 10/2022**, public authorities may extend the timeline to issue an initial decision, for two reasons, but the extension has to be communicated to the requester before the original timeline expires. A public authority's failure to meet the requirement puts a requester's right to seek an internal review at risk, especially if the requester is unaware of what the public authority is required to do to properly apply an extension under section 15.

In **Decision 13/2022**, the Acting Information Commissioner considered the Cabinet Office's failure to issue an internal review decision to a Third Party Applicant whose interest could be affected by a potential disclosure of records responsive to a PATI request. The request asked for records concerning the relationship between the Government of Bermuda and MM&I Holdings Ltd. In its initial decision, the Cabinet Office decided to grant access in part to the requested records. But the Third Party Applicant disagreed with the Cabinet Office's decision to grant access and asked for an internal review. In her Decision, the Acting Commissioner found that the Cabinet Office failed to decide on the Third Party Applicant's request for an internal review within the six-week timeline set out in the PATI Act. As a result, the Acting Information Commissioner ordered the Cabinet Office to issue an internal review decision to the Third Party Applicant on or before 7 June 2022.

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DECISIONS ISSUED...cont.

Decision 13/2022 was the Information Commissioner's first decision on an application for her made by a third party affected by a public authority's decision on a PATI request. As defined by the PATI Act, a third party is "any person (other than the requester or the public authority) who gave information in the record to a public authority in confidence, or any person to whom information in the record relates". Under certain circumstances, section 41 of the PATI Act gives a third party the right to seek an internal review of a public authority's initial decision on a PATI request, even if the original PATI requester has chosen not to exercise this right.

Specifically, third parties have rights under the PATI Act if the records might come within the exemptions for personal information, information received in confidence or commercial information. This is significant because it shows how the making and handling of PATI requests may impact certain parties outside requesters and public authorities. A private entity or individual whose personal information, commercial information or information given in confidence could be affected by a potential disclosure of records as a result of a PATI request, has the same rights of review as the original requester. The responsibility is on the public authority to review the requested records and notify these third parties, not only of the possibility of disclosure but also the timeframes that they have to respond to the public authority. The same applies when an independent review from the Information Commissioner is requested.

Know your PATI rights and be ready to use them if you are notified.

In **Decision 15/2022**, the Applicant submitted a PATI request to the Cabinet Office seeking any correspondence between the Premier or Acting Premier and their staff that related to the then-Director of the Molecular Diagnostic Laboratory. The Information Commissioner found that the Cabinet Office did not issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act. Since the Cabinet Office issued it during the Information Commissioner's independent review, no further action was required.

ICO STATISTICS AS OF 31 MAY 2022

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……..233	Closed: Decided ……..……114
Pending investigations ……56	Closed: Resolved ……..……22
Applications pending validation ……8	Closed: Abandoned ……..……...7
	Closed: Invalid ……..…… 26

Information Commissioner's *Virtual* Quarterly Briefing
Thursday, 16 June 2022, 10:00am - 11:00am
Topic: ***PATI Procedures***
Conflicts of interest in PATI decision making; extensions of time; and consequences of misidentifying the Head of Authority
ICO Briefings are for public authorities only.
Registration details has been sent directly to public authorities.

RightsCon 2022
The world's leading summit on human rights in the digital age.
Topic: ***Get Up, Stand up - Building New Data Rights Regimes in the Greater Caribbean***
Friday, 10 June 2022, 3:00pm
Information Commissioner Gutierrez will join a panel, organised by Privacy Commissioner White, for this online workshop. In the context of human rights in the digital age, the conference topics will emphasise data protection, privacy, artificial intelligence, access to internet/equality issues, surveillance and so on.

International Conference of Information Commissioners (ICIC)
13th Annual International Conference
Theme: ***Access to Information, Participation & Inclusion in the Digital Age***
22 to 24 June 2022
Location: City of Puebla, Mexico and online
Information Commissioner Gutierrez will attend as a member of the ICIC Executive Committee and will be recognised as a distinguished guest of the City. The conference will be hybrid and you may register at **www.informationcommissioners.org**

I.C.Oh! THE VIRGIN PULSE GLOBAL HEALTH CHALLENGE IS BACK...AND THE ICO TEAM IS *TAKING REASONABLE STEPS*

It's back! The Government of Bermuda's Employee Wellness Committee is once again providing government employees with the opportunity to participate in the Virgin Pulse Global Health Challenge. And the ICO team is back! This time we are team "I.C.Oh!" and we are committed to *taking reasonable steps* in this challenge. The challenge runs from 25 May to 27 July 2022. Good luck to all teams who are participating!