Information Commissioner's Office

MONTHLY ROUNDUP

Volume V, Issue VI SEPTEMBER 2022

"When access to information was limited, we needed to load students up with facts. Now, when we have no scarcity of facts or the access to them, we need to load them up with understanding."

Seth Godin, bestselling author and entrepreneur.

WELCOME

The Information Commissioner's Office (ICO) welcomes you to the latest 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 recap our 2022 Right to Know Week initiatives, which included radio interviews, a chat with The Daily Hour Team, our pop-up information booths in the City of Hamilton and an informational video from Commissioner Gutierrez.

ICO team members LaKai Dill, Investigation Officer and Sheena Bassett, Project Officer, at the ICO's pop-up booth at Nelly's Walk on International Right to Know Day.

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BE informed
BE included
BE involved

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2022 RIGHT TO KNOW WEEK - 'ASK IT, KNOW IT, USE IT!'

Right to Know Day is commemorated around the world on 28 September each year to increase individuals' awareness of their right to access information held by the government and other public authorities. Information Commissioners, advocates, human rights organizations, the media, public bodies, and the public collectively celebrate the right to access information and the principles of openness, accountability and transparency.

The ICO marked its 8th Right to Know Day in Bermuda with the theme 'Ask it, Know it, Use it!'. The ICO focused on how individuals across our community have used their PATI rights to obtain records from Bermuda's public authorities, while also taking a closer look at what specific information people have asked for over the past 8 years.

Commissioner Gutierrez held media interviews throughout the week, including the Morning Rush programme with DJ Chubb on Vibe 103 and, for the first time, the Miss Thang Show on Power 95. On International Right to Know Day, the Commissioner joined hosts Jamel Hardtman and Larry Marshall on The Daily Hour. Commissioner Gutierrez spoke on the concrete ways that individuals are using the information that they received under the PATI Act. She responded to questions from the audience, such as whether PATI requests can be made anonymously and how PATI rights can positively impact Bermuda and Bermudians. Picking up on the hosts' discussion about the Bermuda College panel discussion, 'Murder in Paradise' the prior evening, she discussed ways that PATI requests can provide individuals with important information for identifying the root of challenges facing our community and developing effective solutions.

The Daily Hour Host Jamel Hardtman, Co-Host Larry Marshall and Information Commissioner Gutierrez.

On Right to Know Day, the ICO team hosted two information booths in the City of Hamilton at Nelly's Walk and at The Cathedral. Throughout these events, about 70 people received information about their PATI rights, with some individuals taking the opportunity to have one-on-one conversations with team members about how they could take action and make PATI requests.

Commissioner Gutierrez published an informational video which guides viewers through a more in depth look at this year's theme, 'Ask it, Know it, Use it!'. In the video, she highlights that making PATI requests and receiving information allows individuals to close the gap between what you don't know and what you need to know. Commissioner Gutierrez also reminds people that knowledge is power. She speaks to specific public disclosures from PATI requests that have helped promote beneficial public changes. The ICO's 'Ask it, Know it, Use it!' message highlights the positive and far-reaching impact PATI rights are having on the relationship between individuals and the public authorities they interact with.

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4TH 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's recipient is Mr. David Northcott, Information Officer for the Ministry of Home Affairs Headquarters.

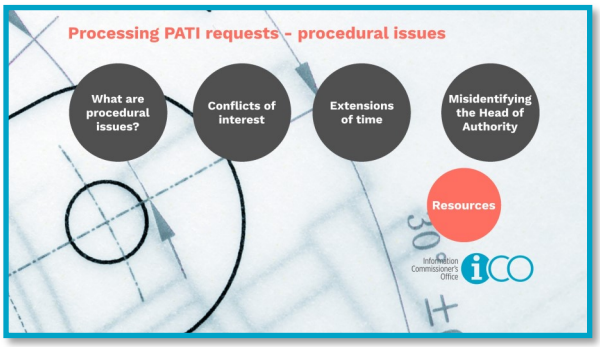
Ms. Rozy Azhar, Permanent Secretary for the Ministry of Home Affairs, The Hon. Walter Roban, JP, MP, Deputy Premier and Minister of Home Affairs, Information Officer David Northcott, Ministry of Home Affairs Headquarters and Information Commissioner Gitanjali Gutierrez

Commissioner Gutierrez recognizes Mr. Northcott for his steadfast commitment to ensuring that all PATI stakeholders that he interacts with are knowledgeable of PATI Act requirements. He has demonstrated a commitment to improving the coordination and cooperation between PATI requesters, public authorities and the ICO. Mr. Northcott has consistently and respectfully upheld requesters' PATI rights while also encouraging his coworkers to understand and adhere to PATI procedures. His positive influence also extends to providing valued support to Ms. Rozy Azhar, the Permanent Secretary for the Ministry of Home Affairs, as well as working diligently with his fellow Information Officers within the Ministry.

Information Commissioner Gutierrez stated "Bermuda's Information Officers are often the first people that PATI requesters interact with when submitting their PATI requests. Information Officers that embrace this important role and make empowered decisions on behalf of their public authorities are invaluable assets in enforcing PATI rights. An Information Officer that is knowledgeable of the PATI Act and supported in this role, can have a positive impact on not only their public authority but the relationships that their public authority has with the public that they serve. This year's award recipient, Mr. David Northcott, upholds the best qualities of an effective Information Officer. My team and I celebrate Mr. Northcott and commend him for his commitment to the principles of the PATI Act."

Permanent Secretary for the Ministry of Home Affairs Ms. Rozy Azhar, stated "I am very pleased and excited that David has won this award. David is an invaluable asset to the Ministry of Home Affairs. Before he came, PATI requests were handled in a haphazard way causing internal reviews and, at times, had to be escalated to the Information Commissioner. David has provided training, advice and assistance to all the Departments within the Ministry of Home Affairs. This award recognises his excellent work and I am thankful to the Information Commissioner for selecting him."

INFORMATION COMMISSIONER'S SEPTEMBER VIRTUAL QUARTERLY BRIEFING



On 15 September, the Information Commissioner held her Quarterly Briefing for public authorities, which focused on three aspects of PATI procedures: conflicts of interest in PATI decision making, extensions of time and consequences of misidentifying the Head of Authority.

The presentation provided attendees with concrete reasons why good PATI procedures benefit both the public and public authorities. The PATI Act, ICO Guidances and the Minister's PATI Practice Code were highlighted as resources to help support the efficient handling of PATI requests throughout the PATI process.

On the topic of conflicts of interest, a concern about a conflict of interest may be raised by a PATI requester, or even by individuals within the public authority. A conflict of interest involves concerns that an Information Officer or Head of Authority has an individual interest in either the records that fall within the PATI request, or with the subject matter for the PATI request.

This issue is common in smaller jurisdictions like Bermuda, where public authorities may have fewer staff members which can lead to questions about potential conflicts. Under the PATI Act framework, the Information Officer and Head of Authority must make their decisions on the PATI request, regardless of their interests or relationship with the records. The PATI Act then provides for an *independent* review by the Information Commissioner who operates independently of a public authority. During the Briefing, the Commissioner explained that even if an Information Officer or Head of Authority had an interest (or the appearance of an interest) in the requested records, they must still carry out their PATI related responsibilities in a professional manner, consistent with their required roles and responsibilities.

Commissioner Gutierrez then turned to the topic of correctly applying extensions of time to facilitate responses under the PATI Act and how to avoid possible missteps. She reiterated that an Information Officer may request an extension of up to six weeks only during the initial phase of the PATI request, however an extension is not available for Heads of Authorities during the internal review stage. She reminded the participants that a time extension under section 15 of the PATI Act is only considered under specific conditions that are identified by the Head of Authority.

The Commissioner also provided guidance on how a Head of Authority should proceed if they find themselves in need of more time when an internal review decision from them is due to the Applicant.

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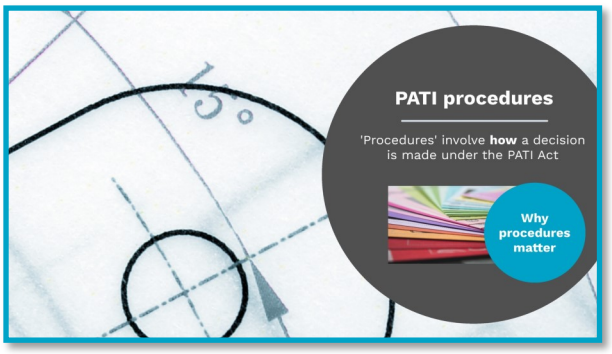
INFORMATION COMMISSIONER'S SEPTEMBER VIRTUAL QUARTERLY BRIEFING...cont.



The Head of Authority must issue a timely internal review decision to the Applicant based on the information in hand, and can inform the Applicant if the public authority continues to process their request after the internal review decision.

Effective communication with the Applicant following the internal review decision may be helpful in reducing the need for an Information Commissioner's review. The final topic for the Briefing centered on the consequences that can result if the Head of Authority is misidentified. This topic is especially important when an internal review decision is made on behalf of the public authority. The Schedule within the PATI Act identifies the correct Head of Authority for the specific public authorities.

The Commissioner expressed that this misstep most often arises when a PATI requester sends an internal review request to the CEO of a quango rather than the Chairman; or to an officer within a government department, rather than the Chairperson of a statutory board or committee; or to the department head, rather than the Permanent Secretary. Commissioner Gutierrez recommended that to avoid a request for an internal review being misdirected to the wrong Head of Authority, public authorities should refer to the Schedule in the Act to ensure that they have correctly identified the public authority's Head of Authority. This information should also be shared with the PATI requester.

The Briefing presentation and notes are available on ico.bm.

ICO STATISTICS AS OF 30 SEPTEMBER 2022

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……...241	Closed: Decided ……..……121
Pending investigations ..……61	Closed: Resolved ……..……..25
Applications pending validation ……0	Closed: Abandoned ……..……...7
	Closed: Invalid ……..…… 27

Q&A CORNER WITH THE ICO

Highlights of some of the ICO's recent responses to enquiries.

I Want to Know... Which Information Officer is responsible for a PATI request?

Q I am the newly appointed Information Officer for my public authority. We received a PATI request from a member of the public but they addressed it to the person who was the previous Information Officer. What should I do as the new Information Officer? Should the old Information Officer be the one to process this request?

A The current Information Officer of the public authority is the one who is responsible for processing this PATI request and issuing an initial decision on behalf of the public authority. The decision-making responsibility is tied to the role of the Information Officer not individuals. In reality, even if a PATI request has been submitted to a public authority and the Information Officer that begins to process that request leaves their role as the Information Officer before the initial decision is due to the requester, the incoming Information Officer should continuing processing the request and issue the initial decision to the requester, before the PATI deadline. If an individual no longer serves as the Information Officer for that public authority who holds that PATI request, the responsibility to issue a decision shifts to the new Information Officer.

This is why it is important for public authorities to keep information such as the current information officer up-to-date in its Information Statement, as required under section 5 (g) of the PATI Act. Once the updated Information Statement is available, copies should be available on the public authority's website and at its principle office. This information should also be forwarded to the Bermuda National Library and Archives and the Information Commissioner's Office.

The Cabinet Office's PATI/PIPA team offers in depth PATI training sessions for incoming Information Officers and existing Officers who feel the need to enhance their skillset as knowledgeable Information Officers.

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Q&A CORNER WITH THE ICO...cont.

Those who may be interested in registering for upcoming training sessions should contact the PATI/PIPA team at pati@gov.bm. In addition, the Minister's PATI Practice Code has proven to be an invaluable resource for persons working with PATI requests across Bermuda's public authorities

The Information Commissioner hosts quarterly Briefings as an opportunity to bring Information Officers, Heads of Authorities and others who are involved in PATI work across Bermuda's public authorities together with the ICO team to discuss topical matters of interest. It is a great opportunity for people to share thoughts and insights while supporting each other as they navigate their PATI obligations. These briefings benefit both new and seasoned Information Officers, so attendance is highly encouraged. Past briefing presentations are available on ico.bm. Invitations for the briefings are sent directly to public authorities.

I Want to Know... What is the correct way to submit my PATI request?

Q This is my first time attempting to make a PATI request and the public authority has told me that I must complete the PATI request form in order to submit my request. Can you tell me how to do this?

A Making a PATI request is easy! You only need to submit your request in writing to the public authority and ask for a specific record. You can send your PATI request as an email or letter. The Bermuda Government also has a PATI request form on its website at gov.bm. *(This form helps the Government efficiently process the details of your request, but using it is not a requirement to make a PATI request).*

The ICO has published the following resources on its website to assist with the PATI request process:

- How to Make a PATI Request brochure (available in both English and Portuguese)
- How to Make a PATI Request video
- Know Your Rights Under the PATI Act brochure (available in both English and Portuguese)

Information Commissioner's Office

WHAT DO YOU KNOW NOW?

HOW TO MAKE A PATI REQUEST

BE INFORMED, INCLUDED AND INVOLVED — MAKE A PATI REQUEST!

MAKE A REQUEST

STEP 1

WHAT RECORDS DO YOU WANT?

Think about the information you are looking for and how a public authority documents that information. It may be in a report, policy memo, manual, budget, procurement document, letter, meeting minutes, email, bank statement, map or diagram, film or microfilm, videotape or sound recording.

STEP 2

DECIDE WHICH PUBLIC AUTHORITY PROBABLY HAS THE RECORDS THAT YOU WANT.

A list of the 200+ public authorities can be found at ico.bm.

No need to worry if you are unsure. Public authorities have a duty under the PATI Act to assist requesters to find the right office or to transfer a request to the correct office.

STEP 3

SUBMIT YOUR WRITTEN PATI REQUEST TO THE PUBLIC AUTHORITY.

The PATI request should be in writing. It can be given to anyone in that public authority, but directing it to the public authority's Information Officer will make your request easier to track.

The 1-2-3 of submitting a PATI request

- **Put it in writing.** ***(email and letters are fine)***
- **Be specific and describe the records enough so the Information Officer knows what you are looking for.**
- **Say how you want to receive the information.** ***(electronic copies are free)***

STEP 4

WHEN YOU GET YOUR DECISION – WHAT NOW?

If you receive a record under the PATI Act, it can be used and shared as public information for everyone. A disclosure under the PATI Act is a disclosure to the world.

If you disagree with the decision, you have the right to:

- An internal review by the head of the public authority;
- An independent review by the Information Commissioner; and
- Seek leave for judicial review by the Supreme Court.

I WANT TO KNOW!

WHAT IS A 'RECORD'

A 'record' under the PATI Act includes information recorded in any format. It can be papers, tapes or film or electronic files.

DUTY TO ASSIST

Public authorities have a duty to assist persons in connection with making a PATI request.

Need help? Just ask.

Book the ICO

for a PATI presentation with your organization or an information table at your upcoming community event.

Are you involved with a local charity, school, programme or organization?

Are you interested in further empowering your community?

Do you know of any local organizations that would benefit from understanding their rights under the PATI Act?

Contact Sheena Bassett, Project Officer at the ICO
sbassett@ico.bm
543-3700

ico.bm

SAVE THE DATE

Information Commissioner's Quarterly Briefing
10:00am - 11:00am
Thursday, 8 December 2022
Thursday, 19 January 2023
Thursday, 9 February 2023
ICO Briefings are for public authorities only.
Registration details will be sent directly to public authorities.

PATI TRAINING NOW AVAILABLE!

PATI Training is now available through the Government's Department of Employee & Organisational Development (DE&OD). If you are an Information Officer in need of training, consider taking advantage of this opportunity.

DATES:
15-17, November 2022, 1:30pm - 4:30pm

AIM:
To provide Information Officers with a working knowledge of the PATI regime and their statutory obligations which will enable them to better conduct their assigned duties.

LEARNING OUTCOMES:

- Understand the PATI regime
- Understand the role of the Information Officer
- Apply exemptions under PATI legislation
- Conduct the public interest test
- Appropriately respond to PATI Requests

WHO SHOULD ATTEND:
Information Officers and their designates

TO REGISTER:
Government employees must register through the HR Portal, http://hr.gov.bm.
Information Officers outside of Government may contact the DE&OD at hrcourses@gov.bm or 279-2820 to register.