Information Commissioner's Office

MONTHLY ROUNDUP

Volume VI, Issue II FEBRUARY 2023

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 take a look at the Information Commissioner's recently issued decisions and the Information Commissioner's most recent Quarterly Briefing, which provided practical approaches for handling complex PATI requests. This issue also discusses an independent review that the Information Commissioner resolved in February through discussions with the PATI requester about their information needs.

"The opportunity to strengthen public trust through greater transparency is likely to arise again. PATI rights enable requesters to more fully understand the context in which public authorities and elected officials make public statements."

Decision 01/2023, Ministry of Legal Affairs and Constitutional Reform Headquarters, paragraph 91

IN THIS ISSUE:

- Information Commissioner's recent decisions and resolution
- Monthly statistics for ICO cases
- February Information Commissioner's Quarterly Briefing

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DECISIONS ISSUED

During February 2023, the Information Commissioner issued two decisions and closed a review by way of resolution. Highlights are below:

When a record doesn't exist but the PATI requester believes it does, how can a public authority show that its search effort was reasonable? Read Decisions 01/2023 and 02/2023 to learn more.

The Information Commissioner's first two Decisions of 2023 touched on the same PATI request. Unfortunately, the request had been cycled between public authorities unnecessarily for a number of years. The Applicant had asked for a report on the government's investigation into certain 2018 allegations about a department head. The Applicant believed the public authority had investigated the matter separately from the Department of Internal Audit.

As background, the Information Commissioner's **Decision 19/2019**, Department of Internal Audit, affirmed that an internal audit report about the same allegations was a record that the public could not access through a PATI request. Then in **Decision 05/2021**, Ministry of Legal Affairs and Constitutional Reform Headquarters, the Information Commissioner overturned the public authority's original refusal to say whether any other report existed. The independent reviews, recently concluded by way of **Decisions 01/2023** and **02/2023**, have addressed an issue not previously resolved for the public through her prior reviews, given the public authority's initial handling of the PATI request.

In **Decisions 01/2023** and **02/2023**, the Information Commissioner found that the public authorities were ultimately justified in denying the PATI request, on the basis that a report by the responsible Ministry Headquarters did not exist. These reviews relied on evidence in a sworn affidavit, which the Information Commissioner had requested specifically to help resolve some inconsistencies with official statements about the government's investigations into the allegations.

An affidavit is not a form of evidence usually required during an Information Commissioner's review. To support the public authorities' factual position, the Information Commissioner determined that an affidavit would allow her to place great weight on the Permanent Secretary's evidence, arising from their personal work knowledge of past events, when contrasted with other statements by public officials which, on their face, presented inconsistent detail.

The Information Commissioner has also commented on a missed opportunity for the public authorities involved with this PATI request, in **Decision 01/2023**. Public trust could have been strengthened if greater transparency about the government's decision making was offered at the outset of their process, in response to the 2018 allegations.

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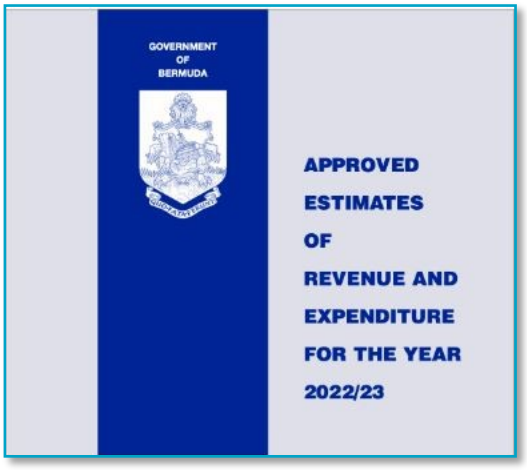
DECISIONS ISSUED...cont.

Successful resolution



The Information Commissioner resolved an application for review about a PATI request for the Government's COVID-related budget expenses. Through the Commissioner probing the Applicant's information needs, it became clear that the information sought was not in the responsive records.

When explaining the Government's budget preparation process and the figures presented for various budget years in the Government's 'Budget Book', the Commissioner conveyed to the Applicant that the actual budget figures representing the amounts spent, which was what the Applicant wanted as opposed to the initial estimates, would be available in the 2023/2024 Budget Book, expected to be published in March 2023.

ICO STATISTICS AS OF 28 FEBRUARY 2023

(from 1 April 2015)

Total applications for independent review by the Information Commissioner ……...247	Closed: Decided ……..……134
Pending investigations ..……..50	Closed: Resolved ……..……..27
Applications pending validation ..……1	Closed: Abandoned ……..……...7
	Closed: Invalid ……..…… 28

FEBRUARY INFORMATION COMMISSIONER'S QUARTERLY BRIEFING

The February Information Commissioner's Quarterly Briefing focused on practical tips for Information Officers who are handling complex PATI requests. The Information Commissioner reminded attendees that complex requests are not necessarily burdensome requests. Instead, they may require a well-planned approach to processing them to keep the work manageable.

The briefing discussed effective approaches to PATI requests that could be complex in two ways. First, the process for handling them may be complex and require particularly good planning and careful attention to the procedural requirements in the PATI Act. Second, the subject matter and content of the records may also be very complex, involving highly technical or legal issues. In addition to the approaches offered by Commissioner Gutierrez, attendees shared the challenges they have faced and their own strategies for efficiently responding to requests.

Attendees' feedback indicated that the briefing was helpful and informative. One participant shared that they enjoyed the interactive discussion and working through questions raised from the floor.

The February Information Commissioner's Quarterly Briefing presentation, with presenter's notes, is available at **ico.bm**.

Information Commissioner's Quarterly Briefings 2023-2024

SAVE THE DATE

Thursday, 8 June 2023
Thursday, 14 September 2023
Thursday, 7 December 2023
Thursday, 22 February 2024

ICO Briefings are for public authorities only.
Registration details will be sent directly to public authorities.

Information Commissioner's Office

PATI TRAINING NOW AVAILABLE!

The Cabinet Office's PATI/PIPA Unit will be offering the following 2-day trainings, in person. If you are an Information Officer in need of training, consider taking advantage of this opportunity.

DATES AND TIME:

- 22 & 23 March, 9:00am to 4:30pm

AIM:

To provide information officers with the basic knowledge of the PATI Regime which will enable them to conduct their assigned duties.

LEARNING OUTCOMES:

Completion of this course will increase the ability to:

- 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:

Email pati@gov.bm.