



Interim Guidance

Continuity of PATI processes following September 2023 Cyber Security Incident

Introduction

1. The Government of Bermuda experienced a cyber security incident on 20 September 2023 that prevented public officers from accessing any electronic public records. This included emails, electronic files, and databases. Over the last month, the Government has provided regular updates to the public on its progress restoring services for many departments and other impacted public authorities, using a new IT infrastructure. The Information Commissioner commends these efforts that strike a balance between keeping the public informed and navigating the Government's response to an attack on its IT infrastructure.
2. At the same time, the Government is responsible for managing extensive electronic public records, containing information held in trust on behalf of the Bermuda public. Electronic public information is an invaluable asset. Yesterday, for the first time, the Premier reassured the public during the Government's press conference that for historical data "all data is accessible from a system level" and the Government is working to restore access for all individual users. The Premier also confirmed that, as of yesterday, "most members of the public service do have access to their historical emails". The Information Commissioner welcomes this update on the retrieval and integrity of electronic public records held by the Government prior to 20 September 2023.
3. The Public Access to Information (PATI) Act remains in force and measures must be put in place to ensure the continued processing of PATI requests to the greatest extent possible. Further, when processing PATI requests, public officers must provide accurate and complete responses to both PATI requesters and the Information Commissioner concerning their department's recovery of electronic public records.
4. In light of the current challenges created by the incident and the most recent updates from the Government, the Information Commissioner provides this interim guidance for impacted public authorities and the public. This interim guidance is intended to assist meeting the requirements and purposes of the PATI Act while the impact of the cyber security incident is ongoing.
5. This guidance is only applicable to Government of Bermuda departments and other public authorities whose electronic records are held on the Government IT infrastructure that was impacted by the 20 September 2023 cyber security incident. Some statutory boards and other types of public authorities may have held their records on the Government of Bermuda IT infrastructure. All references to "departments" in this guidance include the departments as well other impacted public authorities.

Responding to PATI requests

6. Departments must continue to respond to PATI requests during this time. Information Officers should process PATI requests using reasonable efforts and applying the provisions of the PATI Act.
 - a. For example, if a department still does not have access to its electronic records at the time of the PATI request or if the requested email account does not have access to historical emails once restored, the request may be administratively denied with a proper explanation to the requester. Information Officers should not put requests 'on hold' until the department's access to its electronic records is fully recovered or confirmed lost. The process of assessing the extent of recovered information, testing its integrity, and restoring it to the new IT infrastructure may take a lengthy period of time.
 - b. Remember: Determining whether a department holds an electronic record for purposes of a PATI request is based on the department's access to its servers, not an individual officer. All officers within a department have a responsibility under the PATI Act to assist an Information Officer in retrieving requested records held by their department.
7. Departments should continue to process hard copy records in accordance with the provisions and timeframes in the PATI Act.
8. All reasonable efforts should be made to process available electronic records in response to a PATI request.
 - a. For example, if copies of the records are held on an external hard drive, flash drive or other storage device, the integrity of the device should be confirmed, and the records accessed using an operable laptop or desktop in accordance with the department's current IT policy.
 - b. Other requests may involve more recently created records held on unofficial systems (e.g., Gmail, WhatsApp) or on the new Government IT infrastructure.
9. The timeframes under the PATI Act have not been changed. Public authorities must provide a response to the request or a notice of a six-week extension of time within six weeks of receiving a PATI request.
10. If a PATI request was emailed to a department after 20 September 2023, however, the Information Commissioner will consider it 'received' by the department for purposes of the statutory timeframes only when a public officer in the department actually retrieves the email.

- a. Requesters may also show that they delivered a hard copy of their PATI request to the department or that they received the department's acknowledgement of receipt of their emailed PATI request.
 - b. Public authorities should check any generic email accounts for the receipt of PATI requests as soon as possible.
 - c. PATI requesters who emailed requests after 20 September 2023 may wish to re-submit a hard copy request or call the department to learn if and when their request was actually accessed.
11. If the department is not fully operational when it receives the PATI request, e.g., it does not have printing capacity or officers necessary to process the request do not have access to computers, and this will impact its capacity to respond to the request, the department should engage with the requester.
 - a. Requesters are urged to take a practical and proportionate approach to using the PATI Act and to work with departments with the aim of reaching a solution.
12. If a department knows it will not have access to the requested electronic records when an initial or internal review decision is due, it must provide a complete, accurate and timely explanation to the PATI requester, consistent with the provisions of the PATI Act.
 - a. For some requests, it may be foreseeable that the department will not have access to the requested electronic records within the six-week or extended twelve-week timeframe for an initial response to a PATI request or the six-week timeframe for an internal review decision.
 - b. For other requests, a department may be aware at the outset of the PATI request that the electronic information was not recovered after the cyber security incident.
 - c. Departments should provide a clear picture of the situation. Departments should not wait until the end of the statutory timeframe to respond under these circumstances.
13. Requesters are urged to take a pragmatic and proportionate approach to their use of the PATI Act under the current circumstances, and to work constructively with government departments to appropriately manage their information needs.
 - a. For example, hard copy records may be available that respond to part of the request. A department may explain this, and a requester may limit their PATI request to hard copy records. The requester may then decide to submit a request

for historical emails at a later date, once access to the electronic records is restored.

14. Information Officers responding to PATI requests may seek assistance from the Cabinet Office's PATI/PIPA Unit by attending their office on the third floor of the Government Administration Building.

Engaging with PATI requesters

15. The usual PATI process requires departments to engage with PATI requesters.
 - a. Departments are under an obligation to assist PATI requesters in connection with their requests (section 12(2)(a)).
 - b. Departments must also offer to consult with a PATI requester prior to administratively denying a request as burdensome (section 16(2)) with the aim of modifying the PATI request so it can be processed.
16. In light of the 16 October 2023 statement by the Premier that all historical data is still accessible on a server level and individual access is being restored, a department may also wish to proactively inform the public of the general status of its efforts to recover access to its electronic records. If the public is informed that the recovery of access to electronic records is still pending, a PATI requester may decide whether to submit a PATI request and when to do so.
17. In some circumstances, it may be appropriate for a department to ask a PATI requester if they would like to wait and submit their request at a later time. If the request is not urgent, the requester may be agreeable to withdrawing the request and submitting it at a later date. This is a decision for the PATI requester to make, though.
18. If a requester modifies their request to adapt to the current impact of the incident, the Department should make clear to them that nothing in the PATI Act prevents the requester from coming back at a later point and requesting additional electronic records.

Use of unofficial systems

19. The cyber security incident required a number of departments to use unofficial systems for communications, such as Gmail or WhatsApp.
 - a. Departments are reminded that business-related communications held on such systems are subject to the PATI Act.
 - b. Public officers should consult their department's policies around records management to determine their responsibilities and obligations when using non-

official systems. Measures should be taken to ensure that copies of business-related records created on unofficial accounts are moved to the official accounts and deleted from the private account as soon as possible.

- c. Information Officers may need to search for records created after 20 September 2023 and before their department's full restoration of operations and retrieval of information. Information Officers should document their queries to their colleagues concerning the use of unofficial systems and the searches of those systems for public records.

If you need any more information about this Guidance or have an inquiry about any other aspect of the PATI Act, or public access to information generally, please contact us:



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