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To: All Media

FOR IMMEDIATE RELEASE

INFORMATION COMMISSIONER URGES GOVERNMENT TO SEEK PUBLIC CONSULTATION ON PATI AMENDMENTS

Hamilton, Bermuda. The Information Commissioner has released the following statement on the Government's introduction today of the Public Access to Information Amendment Bill 2024:

> Today, the Public Access to Information (PATI) Amendment Bill 2024 was introduced in the House of Assembly. As Information Commissioner, I am encouraged to see parts of the PATI Amendment Bill introduced. Some of the amendments that will go into effect on 1 January 2025 arise from consultation with the Information Commissioner's Office (ICO) since 2020 and will strengthen the governance and administration of the ICO, as well as improve the efficiency of processes for public authorities under the PATI Act.
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> At the same time, however, the Government has introduced new 'appropriate limits' amendments that restrict the public's right to access information. This appropriate limits policy that the Government is pursuing was decided on by the Cabinet without any formal consultation with the ICO or the public. Critically, it lacks important and well-established safeguards found in other jurisdictions that apply similar limits. The public has a right to know how these amendments will impact their rights under the PATI Act.
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> As Information Commissioner, I encourage the public to take notice of the details of the amendments. In the ICO's 2024 Public Perception Research Report, 86% of the respondents believed that the PATI Act was important to them while 77% believed that creating and enforcing the PATI Act was a very important public investment. The public is an invested and crucial stakeholder that should not be excluded from providing input on amendments to the PATI Act.
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> As drafted, the appropriate limits amendments force public authorities to charge a PATI requester an hourly fee when it estimates that processing a PATI request will take over 16 hours. A requester must pay the estimated fee before a public authority is required to respond to their PATI request, or the request will be refused. If a public authority estimates that a request will take more than 100 hours to process, a public authority must deny the request. It must also stop processing a PATI request where it has exceeded 100 hours.

The public should know that in calculating the hourly limits, a public authority may consider the time taken to extract a record, prepare a schedule of records, review the records and apply any exemptions, document the rationale and decision-making considerations, provide a written response to the requester and apply any third-party processes. However, the public should know that, as drafted, the PATI amendments state that a public authority may not take into account the time taken to determine whether it holds the record, to search for, locate and retrieve the records, or the public authority's consideration of the appropriate limit or upper limit, and any liaising with the requester regarding their options.

The public should know that although the PATI Amendment Bill has not set a commencement date for the implementation of the appropriate limits amendments, the Amendment Bill allows the Minister to set the commencement date by regulations subject to the negative resolution procedure.

As Information Commissioner, I am not opposed, in principle, to the implementation of time limits and a fee structure for the processing of PATI requests, which are commonly found in other jurisdictions. I am opposed, however, to the Government's introduction of selective, piecemeal amendments. The resulting amendments tabled today fall short of the comprehensive and well-established legislative frameworks found in other jurisdictions that strike an effective balance between managing the burdens on public authorities with the public's fundamental right to access public information.

The public should take note of the following shortcomings of the current amendments.

First, most significantly, the current amendments lack important safeguards for the provisions to be administered fairly and effectively. In other jurisdictions, these safeguards include allowing fees to be waived based on a requester's financial means, or allowing the hours limitation to be waived for requests that are of national importance or may have a national impact. The public should know, the current amendments do not give a public authority discretion to waive a charge for responding to a request that may take over 16 hours to respond to, or to continue responding to a request over 100 hours. The public should know that the current amendments also risk incentivising poor practice to justify denying a PATI request because it will take too long to respond to it.

Second, these amendments are not accompanied by a robust commitment by the Government to ensure appropriate training and resources are available to the public officers who must process PATI requests. In the Ministerial Statement on the *Updates to the Public Access to Information Act and Regulations*, on 16 June 2023, the Government stated it was introducing PATI fees to ensure that it would be able to recoup some of the costs of processing PATI requests and to reduce the administrative burden on public authorities. The public should know that the root

of the administrative burden, however, is the lack of training, resources and support for the personnel responsible for administering the PATI Act. This is an issue which the Information Commissioner has raised continuously since the implementation of the Act. The public should know that the appropriate limits provision will only serve to create an additional burden on public authorities' resources and public officers where it is not accompanied by adequate training, resources and support.

Third, proper application of the existing PATI provisions could more effectively solve the challenges identified by the Government. The public should know that the existing PATI framework already includes a provision for administratively denying a request where processing a request would cause a substantial and unreasonable interference with a public authority's other work. The public should know that if properly understood and applied by public authorities, this provision could alleviate the concerns that the Government is seeking to address.

Fourth, the establishment of a centralised unit to support processing PATI requests could more efficiently eliminate many of the challenges identified by the Government. As the Information Commissioner has recommended before, the Government could also consider the establishment of a centralised unit to support processing PATI requests, which would enable expertise to be developed within that unit and, again, would alleviate the burden placed on public authorities' resources.

With these shortcomings in mind, I encourage the public to call for the Government to publicly consult on the appropriate limits amendments prior to setting any commencement date. As I stated in the Information Commissioner's 2023 Annual Report, "The right to access public records through the PATI Act is a fundamental right in a democratic society and should not be altered without engaging in public consultation. The public should demand a public consultation and the introduction of safeguards before any commencement date for the provisions on appropriate limits and charges for PATI requesters. Such significant changes to a fundamental right should not be commenced without the public's input."

Today's amendments do not solve the problem, the existing PATI framework already strikes the right balance, and public authorities need support to effectively administer the existing provisions. The public must be given the opportunity to be informed, involved and engaged in the amendment process that impacts their right to know.

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Editor's Notes:

About the ICO

The ICO is an independent public office responsible for promoting the use of and overseeing compliance with the Public Access to Information (PATI) Act 2010. The PATI Act gives the public a right to access records held by public authorities, subject to listed exemptions and administrative grounds for denial of access. Individuals who are dissatisfied with a public authority's response have the right to a review by the Information Commissioner. The decisions by the Information Commissioner are legally binding. The Information Commissioner's Annual Reports and other reports are available at **ico.bm/news-reports/annual-reports**. Further information about the ICO is available at **ico.bm**.