

MONTHLY ROUNDUP

Volume III, Issue I

JANUARY-MARCH 2020

WELCOME!

The Information Commissioner's Office (ICO) welcomes you to our first issue of our Monthly Roundup for 2020! The ICO is an independent, public office that promotes and oversees the use of the Public Access to Information (PATI) Act 2010 in Bermuda.



WE'VE MOVED!

The new location for the ICO is:

Maxwell Roberts Building
4th Floor
One Church Street
Hamilton HM 11

PLUS, we have a new phone number!

441-543-3700

IN THIS ISSUE:

- Recent Information Commissioner's decisions
- Our monthly recap: Statistics for our cases
- Great news from the ICIC: The Information Commissioner for Bermuda is now an accredited member!
- March Information Commissioner's Quarterly Briefing



DECISIONS ISSUED

Between January to March 2020, the Information Commissioner received 2 new applications, issued 3 decisions, and closed 1 invalid application. Highlights from the decisions are below.

Does the PATI Act define what the Information Commissioner can do in a decision? YES! Read [Decision 01/2020](#) to learn about the Information Commissioner's authority under PATI.

The Information Commissioner's independent review is a way for a PATI requester to challenge an internal review decision of a head of a public authority. [Decision 01/2020](#), [Department of Human Resources](#) was a reminder from the Information Commissioner on the scope of her independent review. This Decision considered an application that wanted the Information Commissioner to order a third party to create a statement. The Applicant also wanted the Information Commissioner to apply the criminal provision in the PATI Act. The Information Commissioner emphasised that, in accordance with section 48 of the PATI Act, her jurisdiction is limited to reviewing decisions made by the head of a public authority and to ordering the production of records, when appropriate.

The Department's internal review decision had granted the Applicant access to the responsive records in full. The ICO had also already verified the reasonableness of the Department's search. As a result, the Information Commissioner found in [Decision 01/2020](#) that there were no issues for her to review.

Can a public authority disclose all of the records during an Information Commissioner's review? YES! Read [Decision 02/2020](#) to understand what may happen next.

In [Decision 02/2020](#), [Department of Health](#), the Information Commissioner determined that no issues remained for her to consider in light of the Department's disclosures during the review. The Department had originally relied on exemptions to withhold the names of childcare facilities that were the subject of complaints it received. During the Information Commissioner's review, the Department reconsidered its reliance on the exemptions and decided to release the records.

The Applicant was satisfied with the disclosures but exercised the statutory right to a decision by the Information Commissioner. Under the PATI Act, unless an application for an Information Commissioner's review is withdraw, the Information Commissioner 'shall' issue a decision. The Information Commissioner issued [Decision 02/2020](#), but explained that there were no issues to decide.

REMEMBER: Public authorities should carefully consider exemptions to prevent unnecessary delays in disclosing public records.



DECISIONS ISSUED, cont.

Can a public authority transfer a PATI request if it holds some of the records requested? No, and this runs the risk of a decision by the Information Commissioner.

In [Decision 03/2020](#), [Ministry of Education Headquarters](#), the Applicant challenged the Ministry's decision to transfer a PATI request to the Department of Education. The Ministry of Education transferred the PATI request to the Department before it conducted a reasonable search to see if it had any records that fell within the request.

During the Information Commissioner's review, the Ministry found records that it should have processed in response to the PATI request. The Ministry decided to disclose the records to the Applicant and was not required to take any further steps.

[Decision 03/2020](#) is a reminder for public authorities to check its own records before transferring a request to another public authority, especially if the public authorities have related or overlapping areas of work.

ICO Statistics as of 31 March 2020

(from 1 April 2015)

Total applications for independent review	Closed: Decided	62*
by the Information Commissioner	Closed: Resolved	14
Pending investigations	Closed: Abandoned	7
Applications pending validation	Closed: Invalid	19

**One case in pending judicial review*



BE INFORMED, INCLUDED AND INVOLVED!

MAKE A PATI REQUEST!

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.

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!

Figure out which public authority has those records

Decide which public authority probably has the records you want.

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

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.

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
- seek leave for judicial review by the Supreme Court

THE 1-2-3 OF SUBMITTING A PATI REQUEST

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

YES! THE ICO IS NOW AN ACCREDITED MEMBER OF THE ICIC



In January 2020, the International Conference of Information Commissioners (ICIC) approved the Information Commissioner for Bermuda as an accredited member of the ICIC. The ICIC was established in March 2019 when Information Commissioners from around the world adopted the ICIC Charter in Johannesburg, South Africa. The Charter establishes the governance framework of the ICIC. It sets out the guiding principles, the vision and the mission, the values, the goals, the role of the Conference, its membership, its governance structure and the rules governing the participation of its members.

The ICIC is the only permanent international network that connects member Information Commissioners to foster the protection and the promotion of access to public information as a fundamental pillar to social, economic and democratic governance. What does this mean for Bermuda? The Information Commissioner successfully meets the eligibility criteria under the ICIC Charter, including that she has independent authority and is mandated to oversee access to information legislation. Accreditation also provides the ICO and its officers with valuable international relationships for information sharing and knowledge building. It enables the ICO to ensure the PATI rights of Bermudians and residents of Bermuda are safeguarded consistent with international standards.

INFORMATION COMMISSIONER'S MARCH 2020 QUARTERLY BRIEFING

On 11 March 2020, the ICO held the Information Commission's final Quarterly Briefing for this fiscal year. 41 attendees from 31 public authorities attended. The Information Commissioner first presented an overview of the PATI Act's proactive publication requirements in Part 2 of the Act. Part 2 requires public authorities to publish information such as an Information Statement and details of contracts for goods or services with a total value of \$50,000 or more. This information should be routinely available to the public, without the need to make a PATI request. The Information Commissioner also reviewed the PATI requirements for statutory boards and committees. Participants discussed some of the unique considerations for these public authorities.

The briefing slides, with presenter's notes, are available at www.ico.bm.



ICO COVID-19 RESPONSE

In response to the COVID-19 pandemic, the Information Commissioner has taken the recommendations of health officials and moved the ICO to an alternative remote work environment as of 17 March 2020. While our physical office remains closed, the ICO is 'open' during regular business hours and the public and other stakeholders may reach us by phone or email. These measures were taken to protect the health and safety of our officers, while ensuring that the Information Commissioner and the ICO remained focused on promoting and enforcing public access to information.

The ICO continues to progress the Information Commissioner's reviews and the Information Commissioner will continue to issue decisions. Our Investigation Officers are conducting meetings with public authorities by phone and video conferencing, as well as maintaining communications with applicants. Some delays due to COVID-19 are to be anticipated, and may be inevitable with cases requiring searches of hard copy records. The ICO will continue to enforce the public's access to public information, taking a practical approach to its regulatory activity during COVID-19.

If the public or other stakeholders have questions about your rights under the PATI Act, you may contact the ICO by calling 543-3700 or emailing us at info@ico.bm.

If your school, community or work group would like to schedule a remote workshop or presentation with the Information Commissioner to learn more about the rights or benefits under the PATI Act, please contact us!

The ICO is also fulfilling its important accountability responsibilities to the public. The Information Commissioner has submitted her 2019 Annual Report to Parliament on 31 March 2020, as required by section 58(1) of the PATI Act, for tabling when Parliament returns. The ICO is also nearing completion of the Auditor General's independent audit of the Information Commissioner's 2018-2019 budget.

We thank our stakeholders for their understanding during this challenging time. We remain committed to the mandate of the Information Commissioner to uphold the PATI Act.

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