

Information
Commissioner's
Office



ANNUAL
REPORT
2019

2019 HIGHLIGHTS



“Ultimately, the most significant beneficiaries of the PATI Act remain Bermudians and residents who hold enforceable, powerful PATI rights. I encourage you to be vigilant and mindful that the rights under the PATI Act are your rights.”

Information Commissioner's Welcome

> See page 6



Learn how
to make a
PATI request

LEARN

> See page 16



Monthly
Roundups
published

7

> See page 19



Information
Commissioner's First
Right to Know Day
Declaration delivered

FIRST

> See page 20



Percentage of the public who believe the right to access public records under the PATI Act is important

88%

> See page 22



Individuals attended the Information Commissioner's Quarterly Briefings

141

> See page 32



Email, phone call and visitor inquiries logged by ICO officers in 2019

+100



New applications for an independent review by the Information Commissioner in 2019

36

> See page 27



Percentage increase in decisions by the Information Commissioner in 2019 compared to previous year

169%

> See page 31



Information Commissioner's First awards for Outstanding Information Officers presented

FIRST

> See page 42



New PATI requests received by public authorities in 2019

91

> See page 45



Percentage of public authorities' initial responses to a PATI request granting access in whole or in part to the public records

53%

> See page 45



Percentage decrease in refusals because requested records could not be found, compared to 2018

63%

> See page 47

CONTENTS

.....

Information Commissioner's Welcome	6
The Information Commissioner's Office	8
The Public Access to Information Act 2010	12
How to Make a PATI Request	16
What We Do	18
2019 Public Authorities' Statistics	44
Improving Access to Information	50
Strengthening the Organisation	52
Looking Ahead	54

Transmittal

Delivered to each House of the Legislature in March 2020 as required by section 58(1) of the Public Access to Information Act 2010. Due to the COVID-19 pandemic, the tabling of this Report is delayed until the next sitting of the Legislature.

WELCOME



I am pleased to welcome you to the 2019 Annual Report of the Information Commissioner, which provides an overview of the operations of the Public Access to Information (PATI) Act during 2019 and highlights the work of the Information Commissioner's Office (ICO) during our 2019-2020 fiscal year.

Our aim this year was to ensure that our stakeholders continue to have value-added interactions with the ICO. We have accomplished this by consistently striving to establish public access to information as a critical aspect of governing and public life. With each PATI request made and with every decision issued by the Information Commissioner, the benefits of the PATI Act are reinforced and strengthened. These benefits become stronger for both the public and public authorities, now and for our collective future as a community.

Importantly, this Annual Report confirms what we know: that Bermudians and residents are often quietly using the PATI Act on a regular basis to ensure that they have the information they need for their personal knowledge and choices. This has included PATI requesters seeking records concerning their children's education, pension amounts, employment records, procurement information, policy documents and licensing awards that affect their business, neighbourhoods or family.

When Bermudians and residents exercise their right to ask under the PATI Act, they become empowered and more confident in their dealings with public authorities. Ultimately, when Bermudians and residents are informed, included and involved members of their community, trust and credibility between the public and public authorities flourish.

“Our aim this year was to ensure that our stakeholders continue to have value-added interactions with the ICO. We have accomplished this by consistently striving to establish public access to information as a critical aspect of governing and public life.”

Public authorities, too, are seeing the benefits of the PATI Act. This year we have seen public authorities and individual public officers adopt a more collaborative approach to public access to information. This has fostered a shared commitment to the ongoing improvement of public services that impact people's daily lives. This shifting relationship has also laid the groundwork for better public understanding, engagement and support for government initiatives.

In the midst of these developments, the ICO continues to be a high-performing office, adding value for both the public and public authorities. My Annual Report highlights that despite our increasing workload and limited resources, the ICO's performance improved exponentially. In 2019, our budget was just over \$1 million public dollars and we had a staff of six officers. As you will see throughout this Annual Report, the ICO continued to deliver on its mandate while adjusting to challenges and opportunities.

The ICO nearly tripled the number of Information Commissioner's decisions issued this year. The ICO also greatly increased the number of cases closed within 4-months, a target timeframe for many Information Commissioner's Offices worldwide. This work has ensured that the legal rights under the Act are safeguarded through robust enforcement.

Our ICO Annual Return process remains an effective and systematic method to ensure that public authorities are up-to-date in proactively providing the information that they must have available to the public. We also use this opportunity to provide guidance and support to public authorities who make sincere efforts to fulfill their obligations under the Act. Our Information Commissioner's Quarterly Briefings continue to be another important opportunity for those involved in PATI work to network and engage in in-depth discussions on specific topics relevant to PATI. The feedback that the ICO receives from participants ensures that we continue to provide the guidance they need to be as effective as possible in their PATI work and interactions.

In September we launched the 'I Want to Know!' campaign during Right to Know Week. This on-going campaign supports the empowered PATI requesters: the people who want to be informed, included and involved in community life. The ICO's activities highlighted that PATI requesters are people looking for answers on actions taken by government, quangos or other public authorities that have impacted them personally. They are people who want to understand more fully how government decisions might affect them. PATI requesters are people who care about social, political, environmental or economic issues Bermuda is facing. They are people who are ready to lead and drive the changes that they feel our community needs. Everyday people who just want to know!

With all of the ICO's initiatives and regulatory activity, whether the ICO is engaged with PATI requesters, public authorities, or other stakeholders, we seek to highlight the benefits and importance of the rights under the PATI Act. Through this work, the ICO remains loyal to the Information Commissioner's mandate under the PATI Act, which includes promoting and safeguarding the Act's purposes and the rights it affords.

Ultimately, the most significant beneficiaries of the PATI Act remain Bermudians and residents who hold enforceable, powerful PATI rights. I encourage you to be vigilant and mindful that the rights under the PATI Act are your rights.

Finally, the officers of the ICO have my gratitude. Without a doubt, the strong performance of the ICO this year was made possible because of our exceptional officers who contribute their talent and dedication daily to support the Information Commissioner's mandate. It remains my honour to have them as colleagues.

GITANJALI S. GUTIERREZ

Information Commissioner

THE INFORMATION COMMISSIONER'S OFFICE

The Information Commissioner's Mandate

The Information Commissioner promotes public access to information and oversees compliance with the Public Access to Information Act 2010 (PATI Act). The Information Commissioner's powers and duties, outlined in Parts 2, 6 and 7 of the PATI Act, are to:



Raise public awareness about PATI rights and how to use them



Provide guidance to public authorities about their responsibilities under the PATI Act



Enforce public authorities' compliance with the PATI Act



Review public authorities' decisions under the PATI Act and issue legally binding decisions when necessary

The Information Commissioner carries out her mandate guided by the principles of independence, integrity and fairness.



E. Angie Farquharson, Deputy Information Commissioner (Governance and Compliance) (Secondment); Answer Styannes, Investigation Officer; Tikitta Suhartono, Office Manager; Gitanjali S. Gutierrez, Information Commissioner; Caitlin Conyers, Investigation Officer; and Sheena Bassett, Project Officer.



New ICO Investigation Officer LaKai Dill

ICO TEAM

Transitions

In 2019, the ICO said farewell to two individuals who made lasting contributions to the office: E. Angie Farquharson and Caitlin Conyers. The ICO was privileged to have Angie Farquharson seconded to the ICO for a year as Deputy Information Commissioner (Governance and Compliance). Ms. Farquharson established and successfully implemented the ICO Annual Return process, which for the first time allowed the Information Commissioner to systematically monitor compliance with the proactive publication requirements of the PATI Act. Ms. Farquharson also provided critical strategic advice for strengthening the ICO's work, structure and processes.

As an Investigation Officer, Ms. Conyers was an invaluable part of the ICO team that achieved the ICO's highest application closure rate to date. She provided highly competent and efficient services to applicants and public authorities in reviews before the Information Commissioner. We wish her the best of luck as she pursues personal opportunities.

The ICO also welcomed new Investigation Officer, LaKai Dill, in March 2020. Ms. Dill joined the ICO from the Office of the Ombudsman, where she served as an Investigation Officer for the past five years. Ms. Dill is an experienced investigator, with a longstanding dedication to strengthening good governance in the public sector.

Caitlin Conyers and E. Angie Farquharson



ICO 2019 TIMELINE



2019

APRIL

- ICO officers attend WeSpeak Boot Camp Workshop

MAY

- ICO staff attend the 10th Biennial Caribbean Ombudsman Association Conference 2019
- Information Commissioner Gutierrez speaks on panel: *Strengthening Relationships While Maintaining Independence*
- Investigation Officer and Project Officer attend training on *Shaping and Managing Culture in the Public Sector*

JUNE

- Information Commissioner's Quarterly Briefing held
- Information Commissioner Gutierrez speaks on panel for Information Systems Audit and Control Association (ISACA) Bermuda TechTalk on *Privacy for Everyone*
- Information Commissioner Gutierrez presents *Good Governance: The PATI Act and PIPA* for the Regulatory Authority
- Investigation Officer attends *Legislative Process* training

JULY

- Information Commissioner Gutierrez and Deputy Information Commissioner attend KPMG training, *Primed for Delivery: Exploring the Latest Developments in Value-Driven Public Transformation*

AUGUST

- ICO staff trainings on *Introduction to Blockchain & Fintech* and *Basics & Beyond Basics of Blockchain*

SEPTEMBER

- Information Commissioner's Quarterly Briefing held
- ICO "Sunshiners" complete the Global Health Challenge
- ICO staff training on *Appreciative Inquiry*
- "I Want to Know" know-your-rights brochure published
- International Right to Know Day, week-long events held island-wide
- Inaugural Information Commissioner's Award presented
- ICO releases video, *Public Access to Information: A Conversation with former Premier Alex Scott*

"I've certainly appreciated
your diligence at ICO on
my behalf!"

Applicant



2020

OCTOBER

- "I Want to Know" know-your-rights brochure published in Portuguese

NOVEMBER

- ICO outreach table at block party celebrating the 170th anniversary of the arrival of Portuguese immigrants
- Project Officer attends *Practical Project Management* seminar by CPA Bermuda
- ICO Office Manager attends *Creating Better Connections: Effective Communications*, facilitated by CPA Bermuda

DECEMBER

- Information Commissioner's Quarterly Briefing held

JANUARY

- Information Commissioner for Bermuda receives accreditation as a member of the International Conference of Information Commissioners (ICIC)

FEBRUARY

- ICO completes move to new office location

MARCH

- LaKai Dill joins the ICO as an Investigation Officer
- ICO Investigation Officers receive training from Sean Murray, Director of Research and Quality Assurance, Office of the Information and Privacy Commissioner for Newfoundland and Labrador
- Office Manager attends *Introduction to Occupational Safety and Health*, facilitated by Department of Human Resources
- ICO moves to a remote work environment in response to the COVID-19 pandemic

THE PUBLIC ACCESS TO INFORMATION ACT 2010

Purposes of the PATI Act (section 2 of the PATI Act)

The PATI Act **increases transparency and accountability** of public authorities for the benefit of the public.
The purposes of the PATI Act are to:



Rights under the PATI Act (Part 3 of the PATI Act)

The PATI Act gives Bermudians and residents of Bermuda the **right to access records** held by public authorities, within the provisions of the Act, and the **right to amend a record of personal information** that is incomplete, incorrect or misleading.

This includes the rights to:



PATI requesters have a right to initial and internal review decisions that:

- state whether access is granted or denied for all or part of the record;
- explain the reasons under the PATI Act for the decision; and
- notify requesters about the rights to reviews of the decision.

ASKING IS FREE!

There are no fees for:

- making a PATI request or a request to amend a record of personal information;
- receiving electronic records;
- seeking an internal review; or
- receiving an independent review by the Information Commissioner.

Fees may be required for hard copies of records.

Proactive publication (Part 2 of the PATI Act)

Under the PATI Act, public authorities must **publish certain information (or have it readily available)** to allow the public to obtain basic information about the authority, without having to make a PATI request.



To learn more about the Information Commissioner's oversight of Part 2 of the PATI Act, see the Compliance Oversight section, page 38 to 41.

PATI REQUEST

HOW TO MAKE A PATI REQUEST

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



RECORDS

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.



PUBLIC AUTHORITIES

2

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.



What is a 'record'?

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



Who Can Make a PATI Request?

Any Bermudian or resident of Bermuda can make a PATI request!

This includes individuals, organisations, companies and the media.

This includes YOU!



REQUEST

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:

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)



DECISION

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 public authority's 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



Duty to Assist

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

Need help? Just ask!

WHAT WE DO

STRENGTHENING THE RIGHT

(1 APRIL 2019 – 31 MARCH 2020)



Raising public awareness

The PATI Act provides important—and easy to use—rights. The PATI Act empowers individuals who choose to exercise their right to ask for public records. **PATI requesters are everyday people who want to be informed, involved and included members of the community.** The ICO's outreach activities throughout the year have supported Bermudians and residents' use of their PATI rights. In September 2019, the ICO launched its "I Want to Know" campaign during Right to Know Week. Importantly, the ICO has also been sharing the benefits of the PATI Act with more vulnerable or marginalized communities.



Outreach Programme

Outreach table at the block party sponsored by Vasco da Gama to commemorate the 170th anniversary of the arrival of Portuguese immigrants in Bermuda.





Panelists, including Information Commissioner Gutierrez, discussed *Strengthening Relationships While Maintaining Independence* during the 10th Biennial CAROA Conference 2019.



ICO Monthly Roundups

Seven Monthly Roundups published on www.ico.bm and 478 subscribers received email notices of publication.

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Notices about the Monthly Roundups published on the ICO Facebook page to expand the audience reach.



Press Releases

27 press releases issued on topics including the publication of Decision Notices, upcoming educational and outreach events, and public comments by the Information Commissioner on matters affecting the public's right to access public records.



Panel Discussion Participation

Strengthening Relations While Maintaining Independence at 10th Biennial Caribbean Ombudsman Association Conference.

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Privacy for Everyone Tech Talk panel hosted by the Department of ICT Policy and Innovation, Bermuda Economic Development Corporation, and Information Systems Audit and Control Association (ISACA) Bermuda.



Online Resources

Average website session duration was 2:30 minutes.

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In 2019, 79% of website users were new users (compared to 86% in 2018), with a larger portion this year, 21%, being returning users who continued to use the website as a resource.

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Facebook campaigns reached over 11,000 individuals this year.

WHAT WE DO STRENGTHENING THE RIGHT

Right to Know Week 2019

International Right to Know Day is celebrated globally on 28 September of each year. On this day, Information Commissioners, the public, human rights advocates, the media and public bodies celebrate the right to access public information and the principles of openness, accountability and transparency.

The ICO's theme for the 2019 Right to Know Week was "I Want to Know!". The ICO focused on **highlighting the benefits of using the PATI Act** and showing that public access to information is **an important right for Bermudians and residents of Bermuda** to embrace.

The ICO hosted a series of diverse public events, which included:



Information Commissioner's International Right to Know Week Declaration

Information Commissioner Gutierrez delivered her 2019 Right to Know Day Declaration at City Hall in Hamilton, which reinforced that the right to public information is critical for informed decision making, participation in public life, monitoring public actions and enhancing transparency and public accountability.



"I Want to Know!" Embracing the Benefits of the PATI Act Public Panel Discussion

PATI requesters and Information Officers joined the Information Commissioner on this panel to explore varying perspectives on the benefits of using the PATI Act. The discussion educated, encouraged and empowered Bermudians and residents to consider becoming PATI requesters.



Facebook views of *Public Access to Information: A Conversation with Former Premier Alex Scott* video

+3300



2019 Right to Know Day Panel, where Information Officers and PATI requesters joined the Commissioner in a public discussion on “*Embracing the Benefits of the PATI Act*”



“I Want to Know!” Grocery Store Pop-Ups

On Right to Know Day, the ICO hosted ‘Pop-ups’ at five grocery stores across Bermuda: Marketplace in Hamilton, Somerset and Shelly Bay as well as Lindos in Devonshire and Warwick.

This was the first grassroots outreach initiative for the ICO. The ICO team had an opportunity to talk to people from all segments of the community about their powerful PATI rights.



Video Release! *Public Access to Information: A Conversation with Former Premier Alex Scott*

Former Premier Scott and Information Commissioner Gutierrez discussed the importance of public engagement, PATI rights, good governance and the critical role of the public in strengthening the PATI Act.



“I Want to Know!” ICO Information Booth

The ICO set up an Information Booth at the Washington Mall in the City of Hamilton, where the ICO team had one-on-one discussions with members of the public about the benefits of PATI rights.

“You can have all sorts of policy initiatives, but unless the public are engaged, informed and believe in it and in the government that starts it, you don’t have the marriage between the initiator and the recipient of the service.” Former Premier Alex Scott

WHAT WE DO STRENGTHENING THE RIGHT

Monitoring public awareness

The ICO's annual public awareness survey measures changes in public awareness of the PATI Act and the rights it creates. It also helps the ICO decide where to focus education and awareness efforts in the upcoming year. This year marks the ICO's fifth year of conducting this important public awareness research. Some 2019 highlights include:



Percentage of respondents that believe the right to access public records is important to them

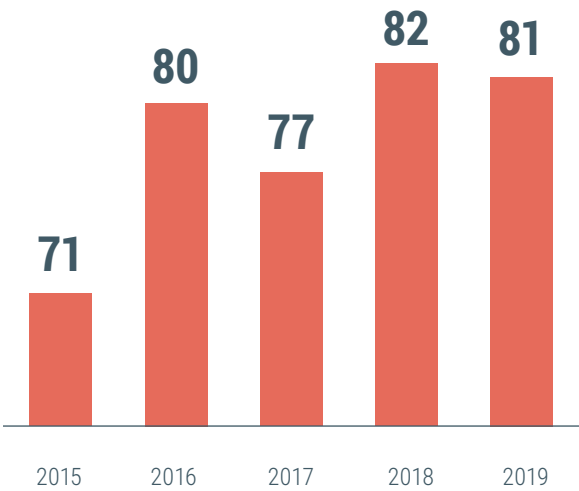
88%



Percentage of respondents that believe that creating and enforcing the PATI Act is a very important public investment

79%

Percentage of respondents who have heard of the PATI Act



Information Commissioner Gutierrez hands out PATI rights information during 2019 Right to Know Week



The full annual surveys and results are available on www.ico.bm.

WHAT WE DO STRENGTHENING THE RIGHT

Providing guidance to public authorities – Information Commissioner's Quarterly Briefings

The Information Commissioner's Quarterly Briefings provide opportunities for public authorities to learn about recent decisions, lessons from resolved cases, insights from trends the ICO has observed and best practice recommendations. The 2019 topics were:



Transferring a PATI request	PATI responsibilities for statutory boards and committees	Commercial information exemptions	Proactive publication	The ICO's facilitated resolution process	Third party notification	When a record is 'held by' a public authority
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Number of participants from government departments, quangos, statutory boards and committees, and parish councils that attended the Quarterly Briefings

141



Number of different public authorities that were represented

60

We continue to receive positive feedback from participants:

"The presentation topics were specific. Allowed me to read and prepare prior to attending"

"Great briefing and participant comments"

"Very informative and provided much clarity on a very important piece of legislation"

"In depth analysis of key issues"

"Very informative and there is always a new perspective on looking at the PATI Act and how to move forward positively"

"Excellent, opened my eyes to the importance of the process"

"Informative and well presented with relevant examples"

"I thought the briefing was very helpful, conceding that some of the issues discussed can be very complicated"

"Very informative. Greatly helps me with my PATI requests"

"I appreciate the ICO disseminating relevant information that assists Information Officers in their role"



Quarterly Briefing slides (including presenter's notes) are available at www.ico.bm.

WHAT WE DO STRENGTHENING THE RIGHT

The Information Commissioner's fundamental mandate is to promote public access to information and the purposes of the PATI Act. To this end, the Information Commissioner provides formal and informal consultation as well as engages with stakeholders and policymakers **to safeguard and strengthen public access to information in Bermuda.**



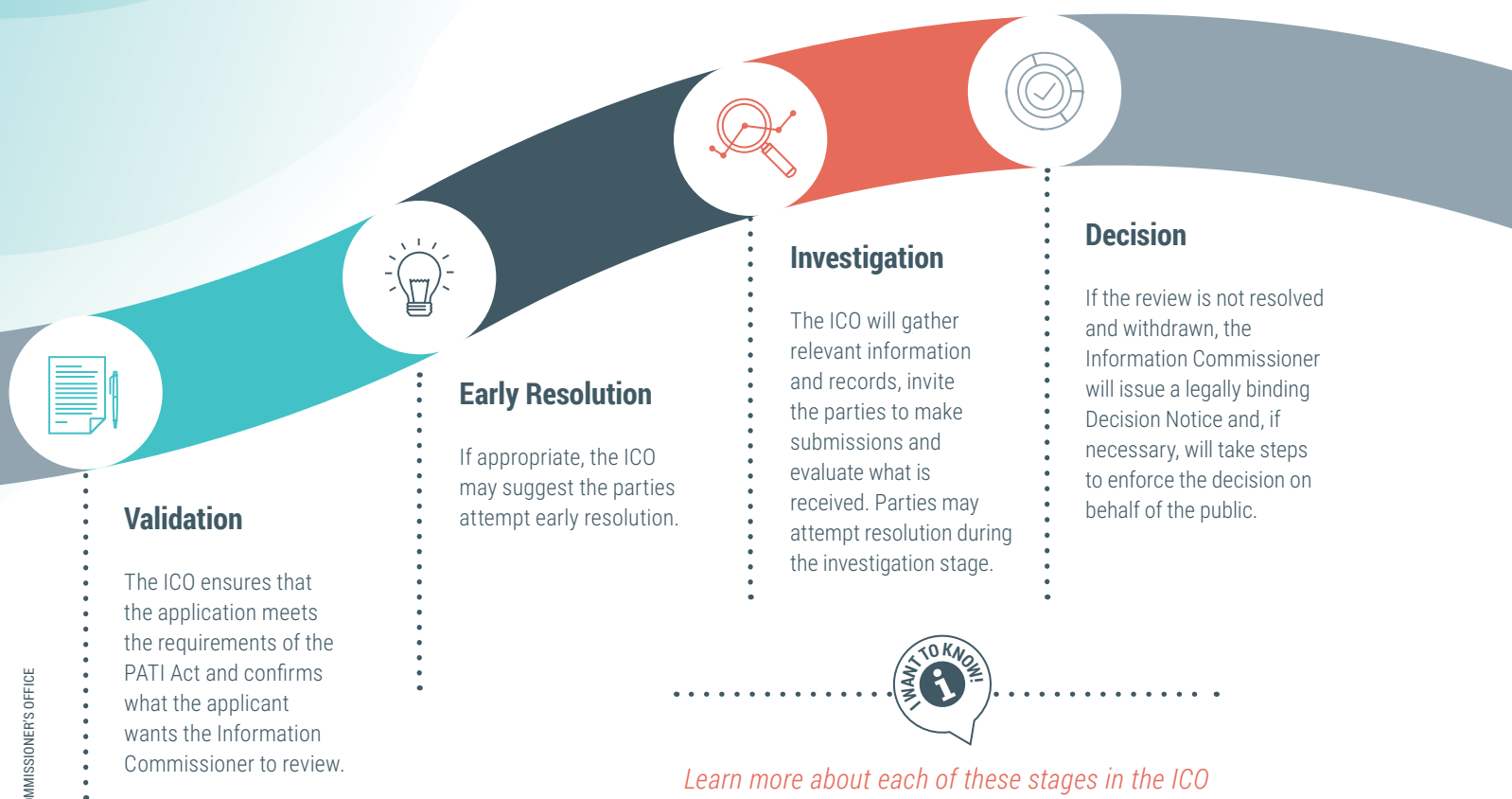
WHAT WE DO

ENFORCING THE RIGHT

(1 JANUARY 2019 – 31 DECEMBER 2019)

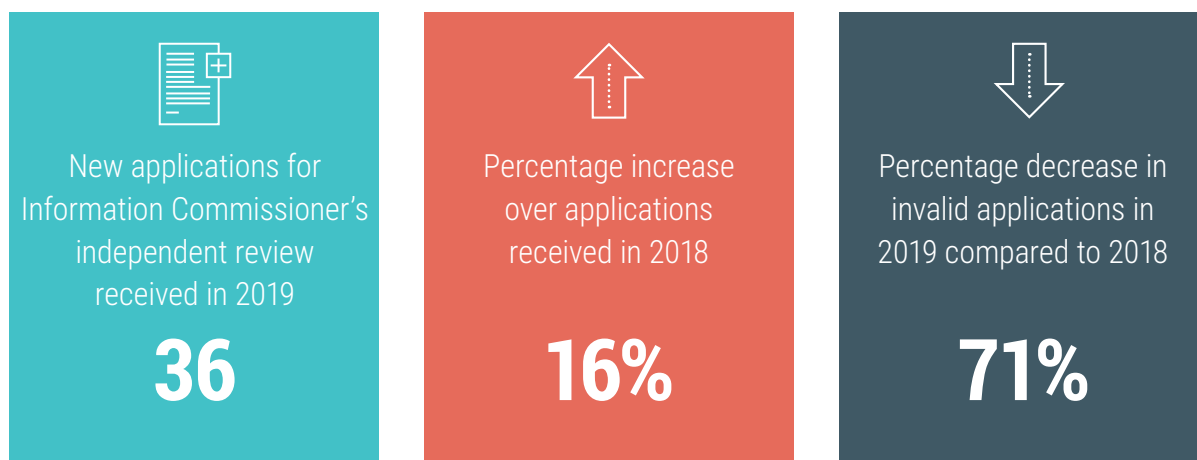
Reviews and Decisions

Every PATI requester has a right to an independent review by the Information Commissioner which may progress through four stages: validation, early resolution, investigation and decision.



Learn more about each of these stages in the ICO Reviews Policy and Handbook at www.ico.bm.

The Information Commissioner's 2019 Reviews



The Information Commissioner's total caseload for 2019

In 2019, the ICO carried over 39 open reviews from previous years. This brought the ICO's caseload in 2019 to 75 applications.

	2016	2017	2018	2019
Caseload				
Reviews brought forward from previous years	7	30	36	39
New applications	32	22	31	36
Total	39	52	67	75

Validation of new applications

The Information Commissioner can only consider applications for review when the applicant has asked the public authority for an internal review and six weeks has passed since then.

	2016	%	2017	%	2018	%	2019	%
Proportions of New Valid Applications								
Valid	30	94	18	82	21	75	34	94
Invalid	2	6	4	18	7	25	2	6
Total	32	100	22	100	28*	100	36	100

All invalid 2019 applications were from first-time applicants who applied too early. The ICO explained to them how to make valid applications in the future.

*Three applications received in 2018 were deemed abandoned before the applications were validated.

WHAT WE DO ENFORCING THE RIGHT

Reasons applicants asked for a review by the Information Commissioner

Applicants asked the Information Commissioner for an independent review for a variety of reasons. This year, the majority of new reviews involved public authorities' reliance on exemptions to deny access to records:

		2016	2017	2018	2019
Exemptions Challenged in New Cases					
s.22	Health or safety	0	1	0	0
s.23	Personal information	3	4	2	1
s.25	Commercial information	4	9	1	2
s.26	Information received in confidence	9	4	3	5
s.27	Cabinet documents	0	0	2	0
s.28	Ministerial responsibility	2	0	1	1
s.29	Deliberations of public authorities	3	4	1	2
s.30	Operations of public authorities	3	3	0	1
s.31	Financial and economic interests	0	0	0	1
s.32	National security, defence and international relations	0	1	0	1
s.33	Governor's responsibilities	0	1	0	0
s.34	Law enforcement	0	3	4	1
s.35	Legal professional privilege	1	0	2	4
s.36	Parliamentary Privilege	0	0	0	1
s.37	Disclosure prohibited by other legislation	2	3	2	2
s.38	Non-disclosure of existence of record	0	0	0	1
Total		27	33	18	23

WHAT WE DO ENFORCING THE RIGHT

Applicants also challenged public authorities' failure to respond to a PATI request, administrative denials and other procedural issues.



Percentage increase
in failure to decide
reviews, compared
to 2018

44%



Percentage decrease in challenges
to the reasonableness of public
authorities' search for records,
compared to 2018

50%

		2016	2017	2018	2019
Administrative Denials and Other Issues Challenged in New Cases					
s.4	Inapplicability of PATI Act	0	0	2	5
	Failure to decide	6	3	9	13
s.16	Administrative denial	10	9	4	4
	Fees charged	0	0	0	0
	Reasonableness of search	9	2	6	3
	Other (e.g., manner of access given, insufficient assistance provided, etc.)	6	3	1	1
Total		31	17	22	26

In the last two years, the Information Commissioner has seen a rise in the number of challenges to public authorities' reliance on section 4 of the PATI Act. Section 4 establishes that the PATI Act does not apply to operational records of certain public authorities. Only their administrative records are subject to the PATI Act.

WHAT WE DO ENFORCING THE RIGHT

Application outcomes

Of 75 applications pending in 2019, the ICO closed 56% or 42 of them. The Information Commissioner issued 35 decisions in 2019, almost triple the number of decisions issued in the previous year.

Applications closed in early stages

Applications for an independent review received by the Information Commissioner may be closed in early stages either because they were invalid, abandoned or withdrawn, or because an early resolution was attempted and successful.

Applications Closed in Early Stages	2016	2017	2018	2019
Reason for Closure				
Invalid	2	4	7	2
Early resolution	0	0	0	1
Abandoned/Withdrawn	1	0	3	0
Total	3	4	10	3

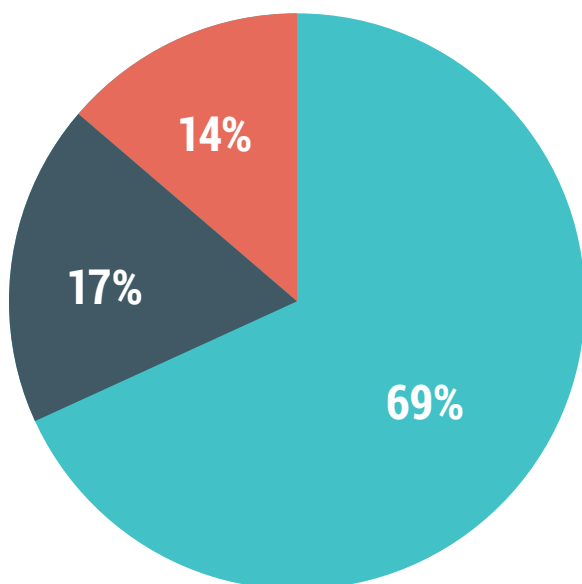
Reviews closed during investigation

Reviews do not always result in a decision by the Information Commissioner. If the parties engage in a facilitated resolution and settle all of the issues, the Information Commissioner may accept an applicant's decision not to pursue the review further. In 2019, the Information Commissioner successfully closed three reviews by way of facilitated resolution.

Reviews Closed During Investigation	2016	2017	2018	2019
Reason for Closure				
Resolved	1	3	5	3
Abandoned/Withdrawn (other)	1	3	0	0
Total	2	6	5	3

WHAT WE DO ENFORCING THE RIGHT

Decision outcomes



Information Commissioner's 2019 decisions

Of the 35 decisions issued, the Information Commissioner decided 24 of them for the applicant. This includes 13 failure to decide decisions.

The remaining 11 decisions by the Information Commissioner upheld the public authority's decision in whole or in part.

- For applicant
- For public authorities
- Partially upheld

	2016	2017	2018	2019
Decision Outcomes				
For applicant	5	2	10	24
For public authority	0	2	0	6
Partially upheld	0	1	3	5
Total	5	5	13	35

Information Commissioner's decisions taken to judicial review

Only one of the Information Commissioner's 2019 decisions has been taken to judicial review: Decision Notice 24/2019, [Bermuda Hospitals Board](#), concerning the Information Commissioner's order to disclose the range of total costs for the Executive Team Member posts in 2015/2016 in more narrow bands, along with other compensation information. As of March 2020, the case is pending in the Supreme Court.

WHAT WE DO ENFORCING THE RIGHT

The 2019 decisions highlight the purposes, importance and benefits of the PATI Act and the rights it provides.

The PATI Act ensures that **when public authorities receive public funding, information about their spending and work will be subject to public scrutiny**. Questions about public spending go hand in hand with questions about public decision making. With great public funding, comes great public accountability.

As Decision 09/2019 shows, the PATI Act empowers Bermudians and residents to learn more about public spending decisions. In this decision, the Information Commissioner ordered the Department of Public Lands and Buildings to disclose a minimally redacted copy of a KPMG business review report carried out on the Sandys 360 Sports, Aquatic and Enrichment Centre (Sandys 360), as part of the decision making process concerning further Government financial support for Sandys 360. Prior to the KPMG business review, Sandys 360 had benefitted from a series of significant grants from the public purse.

In this decision the Information Commissioner also emphasized that **when the Government engages in a significant, voluntary investment of public funds, the transaction generally requires more transparency to ensure**

value for money for the public and to provide the public with the information needed to understand the decision making.

The Government requested evidence to support its financial decision making concerning Sandys 360. Similarly, the PATI Act gives any Bermudian or Bermuda resident the right to ask for public records to enable them to make informed assessments of how public money is spent.

Other decisions by the Information Commissioner also support the purpose of the PATI Act to eliminate unnecessary secrecy surrounding public spending and finances. In Decision 24/2019, for example, the Information Commissioner ordered Bermuda Hospitals Board to disclose a narrower range for the total costs of the compensation for Executive Team posts by individual positions.

By their nature, decisions by public authorities impact the public in some way. A key purpose of the PATI Act is to **further public understanding and accountability of public authorities' decisions**. Bermudians and residents have an interest in knowing that public authorities' decisions are lawful, merit-based, appropriate and consider all the relevant factors.

For example, in Decision 02/2019, the Information Commissioner ordered the Office of the Governor to disclose records relating to the decision making process around the appointment of the Director of Public Prosecutions in 2013 and 2015, without identifying any of the candidates or other personal information. The Information Commissioner found that **there is a strong public interest in understanding how the former Governor exercised his discretionary constitutional authority because it would "further the public's understanding of [the] decision making process; provide reasons for the decision; and promote accountability of and within Government"**.

Similarly, in Decision 25/2019 the Information Commissioner required the Bermuda Police Service to disclose further parts of its Operational Order related to the policing of the protest at the House of Assembly on 2 December 2016.

The right of access under the PATI Act is balanced by exemptions within the PATI Act that recognise public authorities' need in some cases to privately engage in free and frank discussion before a final decision is made, or to maintain the confidentiality of some decisions and rationales to protect the interests of others or safeguard the community.

In Decision 12/2019, the Information Commissioner upheld the confidentiality of a beneficial ownership registry whose disclosure was prohibited by the Bermuda Monetary Authority Act 1969. The Information Commissioner also upheld the nondisclosure of records concerning two physicians in Decision 27/2019, because the Bermuda Health Council Act 2004 preserved the confidentiality of the Health Council's regulatory records.

In Decision 20/2019, Ministry of Finance Headquarters, the Information Commissioner upheld the nondisclosure of draft records where the final record had been disclosed, and upheld the nondisclosure of communications made in confidence between Bermuda and the UK Secretary of State for Foreign Affairs.

Sometimes, a public authority's decision concerning a single entity is not subject to public disclosure because disclosure of the details of specific law enforcement or regulatory activity would undermine the activity, to the public's detriment. It might also be unfair to the subject of the action. In Decision 34/2019, for example, the Information Commissioner upheld the Bermuda Police Service's refusal to disclose records related to a company that was never the subject of a prosecution.

WHAT WE DO ENFORCING THE RIGHT

The PATI Act has the ability to **eliminate unnecessary secrecy around public authorities' decision making and activities**. It is not always clear to the general public what different public authorities do, what decisions public authorities are required to make and how public authorities work. Basic information can sometimes be found in a public authority's Information Statement, which the PATI Act requires each public authority to publish. But sometimes further information is needed, which may prompt a PATI request.

In several 2019 decisions, the Information Commissioner highlighted the duty to assist requesters during the PATI request process and **the need for public authorities to provide descriptions of their records and processes to PATI requesters**.

In Decision 35/2019, the Applicant asked the Ministry of Finance Headquarters for records about the work of the National Anti-Money Laundering Committee (NAMLC) but did not have enough information about the work and processes of NAMLC to know which records contained the information sought. The Information Commissioner required the Ministry to fulfill the duty to assist under the PATI Act by providing the Applicant with sufficient information about NAMLC's processes, procedures and records to enable the Applicant to clarify the scope of the PATI request.

Concluding that the Ministry did not meet its duty to assist, the Information Commissioner ordered the Ministry to provide the Applicant with sufficient information on NAMLC's processes and procedures to allow the Applicant to clarify the scope of their PATI request.

Similar issues arose in Decisions 30/2019, 31/2019 and 33/2019 involving an Applicant's request to the Ministry of Health Headquarters for records about medical cannabis import applications. The Applicant was able to identify the information being sought, but did not have sufficient information on how the Ministry recorded this information. Providing an accurate schedule and description of records, by itself, would have met at least part of the Applicant's information needs and might have avoided the need for further PATI requests.

As PATI requesters submit PATI requests to increasingly different public authorities, the Information Commissioner has issued decisions upholding **the limits of the PATI Act**. Section 4 is an important part of the PATI Act, which defines the scope of Act's application.

Section 4 clarifies that the records related to the constitutional or statutory work of certain public authorities do not fall within the scope of the PATI Act. All of these public authorities (except the recently-added Financial Policy Council) have decision making responsibilities that are driven by their independent constitutional or statutory mandate and should not be subject to external influence. **The PATI Act still applies, however, to their administrative records because these authorities remain publicly accountable for matters such as spending, procurement or human resources records that are common to any public authority.**

In Decision 19/2019, the Information Commissioner upheld the Department of Internal Audit's decision that under section 4, the PATI Act did not apply to Internal Audit's report concerning the Director of Child and Family Services. In Decision 02/2019, Office of the Governor and Decision

27/2019, Bermuda Health Council, the public authorities did not realise that some of the records they held fell outside the scope of the PATI Act. In these cases, the Information Commissioner invoked the limits in section 4 on the scope of the PATI to exclude those records from public disclosure.

Importantly, the Information Commissioner provides an independent review to safeguard the public's rights if one of the section 4 public authorities decides that the PATI Act does not apply to a record. **An independent review is the crux of an enforceable right under any access to information framework.** It also benefits a public authority when the Information Commissioner's independent review agrees with the public authority's decision and enhances the credibility of the authority's decision, as shown in Decision 19/2019, [Department of Internal Audit](#).



All of the Information Commissioner's decisions are published on the ICO website one week after issuance to the parties. Highlights and summaries of the decisions are also available in the ICO's Monthly Roundups.

WHAT WE DO ENFORCING THE RIGHT

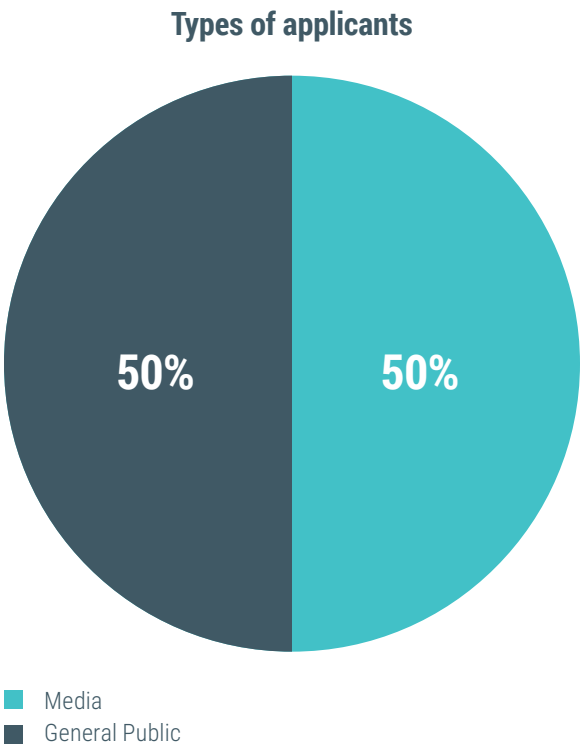
The Information Commissioner's Reviews and Decisions: 2015-2019

For the first time, we have examined cumulative data on the first five years of the Information Commissioner's reviews and decisions, 2015-2019.

Type of applicants and public authorities in applications before the Information Commissioner

The most significant result is that applicants seeking Information Commissioner's reviews for the last five years are divided evenly between applicants from the media and from the general public – it is a 50/50 split.

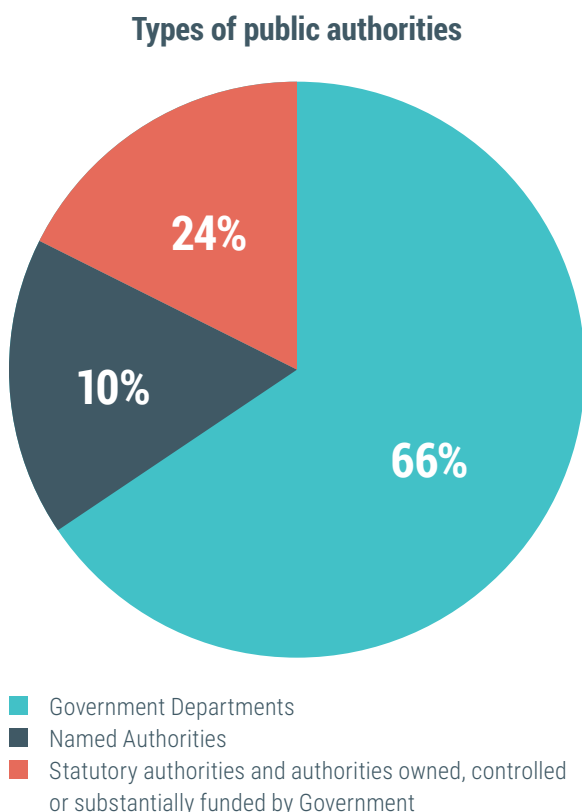
This data confirms that while some high-profile PATI requests in Information Commissioner's reviews have received much public attention, individual Bermudians and residents are applying to the Information Commissioner and using the PATI Act to stay informed, involved and included.



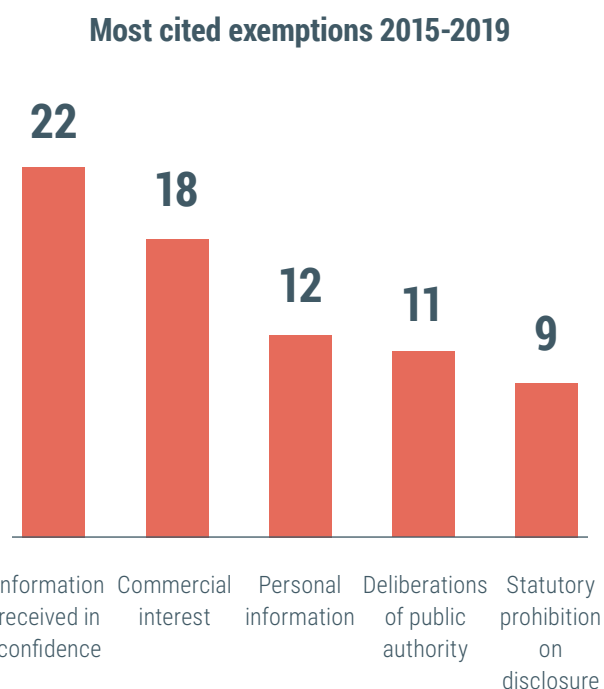
WHAT WE DO ENFORCING THE RIGHT

Most of the valid applications received by the Information Commissioner involved government departments.

For the first five years of the PATI Act, public authorities relied upon the following exemptions the most in their decisions reviewed by the Information Commissioner:



The Information Commissioner did not receive any applications for independent reviews involving local governments or parish councils.



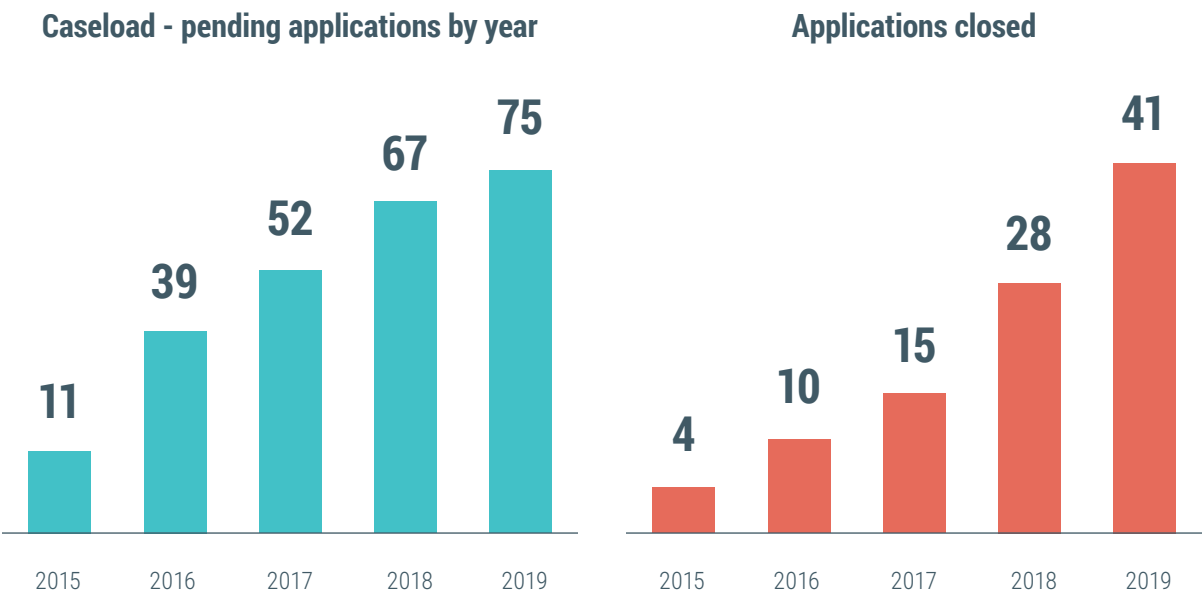
The Schedule to the PATI Act defines 'public authorities' as:

- Entities listed by name, such as the Cabinet Office or Bermuda Police Service
- Every government department
- Every statutory entity that has governmental or quasi-governmental functions
- Every entity owned or controlled by the Government
- Every entity that is substantially funded by the Legislature, and
- Local governments and parish councils

WHAT WE DO ENFORCING THE RIGHT

Improving Performance

The Information Commissioner is pleased to share the ICO's continually improving performance. The ICO's performance reflects its growth from its initial creation into a well-established public office.



Our workload has increased exponentially since the ICO was established in 2015.

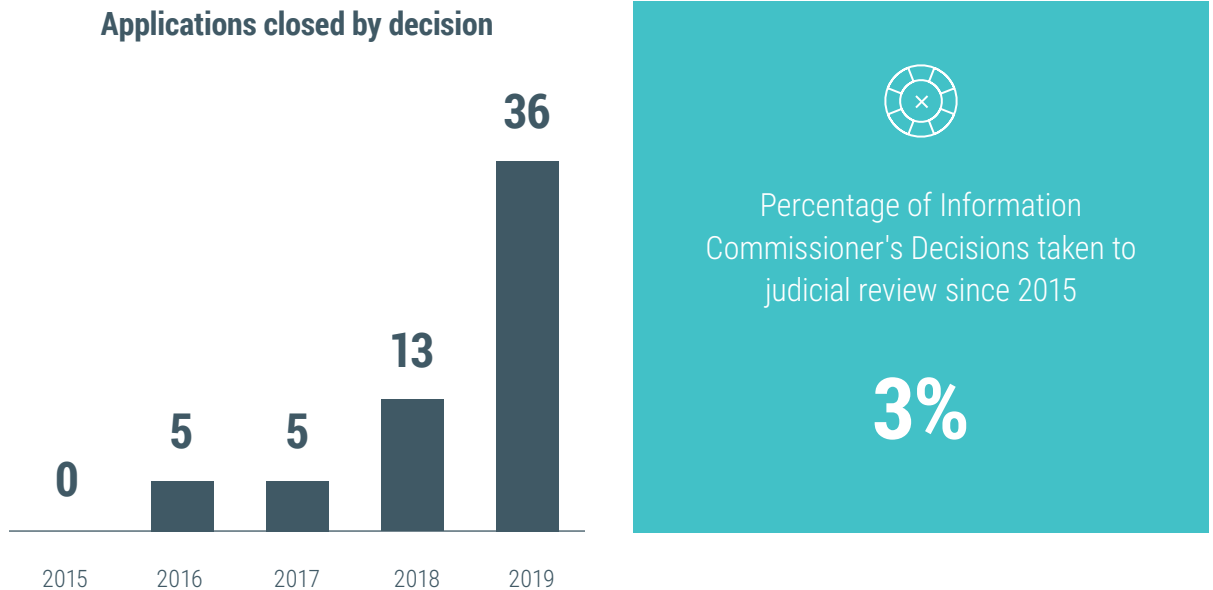
Despite this growing caseload, the ICO has increased its application closures year-over-year. In 2015, during the first 10 months of establishment, the ICO closed only 4 applications. By 2019, this number has increased to 41 applications closed for the year.



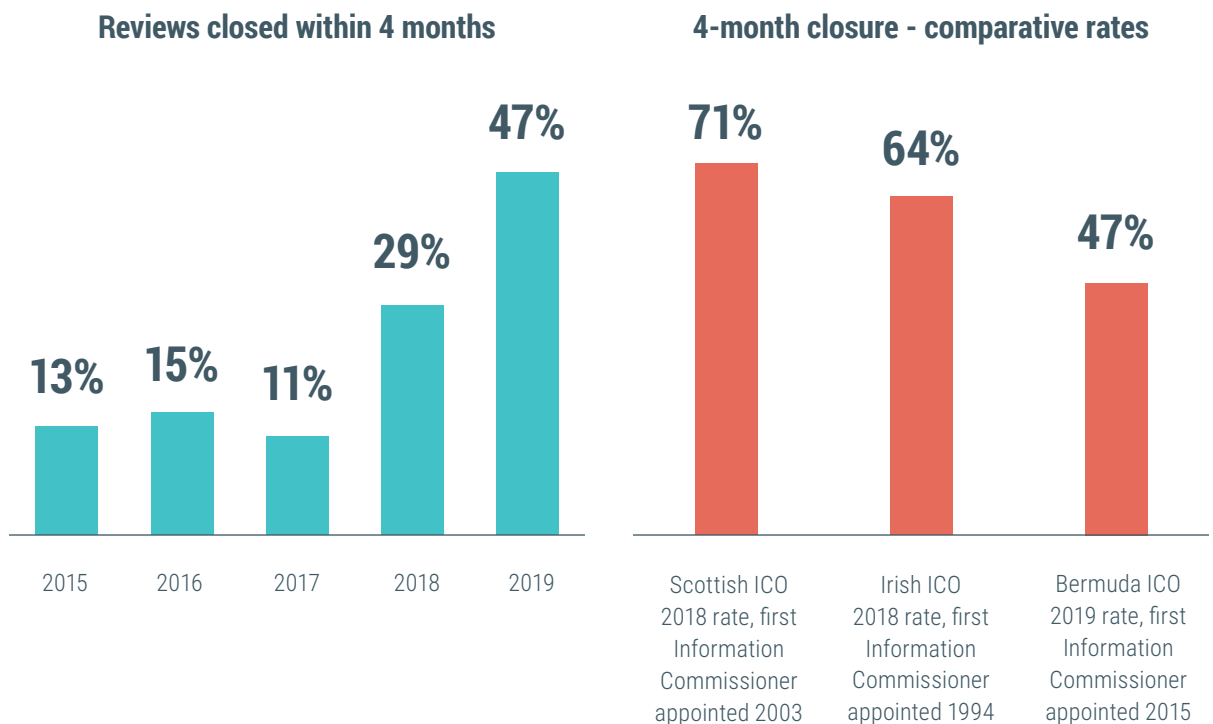
Applications may be closed by decision or resolution, or because they are withdrawn or invalid.

WHAT WE DO ENFORCING THE RIGHT

The Information Commissioner **nearly tripled the number of applications closed by decision in 2019**. This increase is a reflection of the growing capacity and established nature of the ICO, even as other areas of its work have also expanded during this same period.



The ICO has significantly increased its percentage of reviews closed within four months, from 13% in 2015 to 47% in 2019. As the ICO progresses, the Information Commissioner for Bermuda will aim to reach the closure rates found in jurisdictions with Information Commissioners for longer periods, as shown below.



WHAT WE DO ENFORCING THE RIGHT

Compliance Oversight

The PATI Act significantly strengthens access to public information by placing obligations upon public authorities **to make specific information available as a matter of course, without the need for a PATI request**. The Information Commissioner is mandated to oversee and, where required, enforce compliance with these requirements.

Proactive publication (Part 2 of the PATI Act)

Public authorities must:

- publish an Information Statement
- maintain a PATI request log (without any requesters' names)
- have quarterly expenditures readily available for the public, and
- gazette all of its contracts for goods or services with a total value of \$50,000 or more.

Public authorities' PATI statistics (section 58 of the PATI Act)

Public authorities must submit their annual PATI statistics to the Information Commissioner for inclusion in her annual report.

The Information Commissioner monitors public authorities' compliance with these requirements through the submission of the ICO Annual Return from public authorities. The ICO Annual Return enables the Information Commissioner to provide guidance, when needed, to a public authority to bring itself into compliance with the PATI Act. If noncompliance persists, the Information Commissioner will use her statutory authority to enforce compliance.

2019 ICO Annual Return

This year, the Information Commissioner is pleased to report that nearly all public authorities submitted their ICO Annual Return.

ICO Annual Return	2018		2019	
	Number of Public Authorities	Percentage of Total Number	Number of Public Authorities	Percentage of Total Number
Timely submissions	109	55	84	42
Late submissions	77	39	108	54
Failed to submit	2	2	4	2
Under review	9	4	4	2
Total	197	100	200	100

Noncompliance with the requirements in section 58(3) to report PATI statistics is addressed in the following section.

WHAT WE DO ENFORCING THE RIGHT

Public contracts

The PATI Act requires public authorities to publish an official Gazette Notice detailing all of their contracts for goods or services with a total value of \$50,000 or more. The ICO Annual Return tracks public authorities' compliance with this requirement. It also serves as a helpful yearly reminder for authorities to provide this important public spending information to the public.

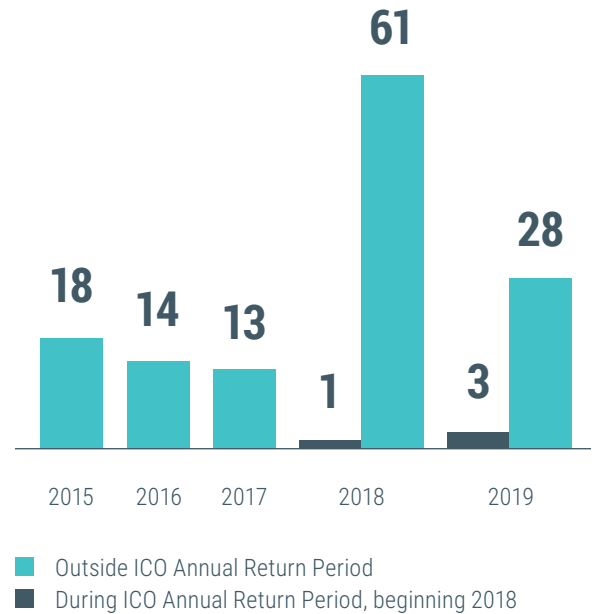
In 2019, the ICO Annual Return process commenced in October and ended in February 2020. During this period, 28 gazette notices detailing the contracts with a total value of \$50,000 or more were issued by 25 public authorities. In comparison, only 3 gazette notices were issued outside the ICO Annual Return process between 1 April 2019 and 31 October 2019.

ICO officers make every effort to work with public authorities to understand the requirements of the PATI Act. This often involves one-on-one meetings with new Information Officers or heads of public authorities to help them understand the PATI Act's proactive publication and statistical reporting requirements.

One-on-one assistance

The ICO Annual Return also enables the Information Commissioner to determine the ongoing status of a public authority's compliance with the requirements of the PATI Act. Through this process, the ICO can identify the public authorities that are still working to bring themselves into compliance with the PATI Act by, for example, preparing an Information Statement. In these cases, the ICO agrees with these public authorities on a reasonable timeframe to bring the authority into compliance, providing appropriate guidance throughout, if requested.

Number of contracts published in official gazette notices



WHAT WE DO ENFORCING THE RIGHT

Voluntary publication - going the extra mile

The PATI Act encourages public authorities to voluntarily publish information to help the public learn about their work, services and decisions. The ICO Annual Return reminds public authorities to share these efforts.

This year, many public authorities have gone the extra mile by voluntarily making information available that is meaningful to the public.



The **Ombudsman** publishes on its website its Annual Reports, archived news, financial statements and **systemic investigation reports**.

.....

Department of Land Valuation created a **brochure** on how the PATI Act relates to its department.

.....

The Judiciary publishes its Annual Report on its website, along with the considered judgements of the Supreme Court and Court of Appeal, and **all Practice Directions** issued within any given year.

.....

Bermuda Economic Development Corporation publishes on its website its **Quarterly Statement of Operations**; details of events and special projects; information about businesses in its Enterprise Bermuda Incubator; **podcasts of its radio shows**; recorded seminars and workshops; **videos of its TV show**; and various statistics.



Land Title Registry Office routinely provides copies of their **'Practice Guides'** explaining specific topics related to Land Registration.

.....

E-Commerce Advisory Board's meeting minutes are available for inspection.

.....

Department of Environment and Natural Resources publishes its quarterly **"Envirotalk" newsletter**, providing information about natural environment issues, and a quarterly newsletter for fishermen.

.....

Bermuda Monetary Authority publishes an Annual Report, a quarterly ILS Market Report, its Annual Business Plan, a Quarterly Banking Digest, an Insurance Digest and a Regulatory Update, along with **discussion papers and consultation papers for review and comment by the public**, and a variety of statistics and other information.



Health Insurance Department publishes **Health Insurance Committee Minutes**, Financial Statements, benefits information and annual reports.

.....

The Real Estate Advisory Board publishes **all licensed real estate brokers and agents** on its webpage.

.....

The Human Rights Commission publishes on its website its Annual Report, Information Statement and related documentation and **updates reflecting developments with the Commission**.

.....

Department of Workforce Development publishes various information for its **Summer Employment Programme for college and university students**. Information on community outreach, career development and training workshops are published on the Bermuda Job Board website, Bernews and social media.

WHAT WE DO ENFORCING THE RIGHT

Voluntary publication - going the extra mile



Ministry of Finance Headquarters publishes the Government's fiscal and economic performance on a quarterly basis and a Pre-Budget Report to increase transparency in the budgeting process.



Bermuda Civil Aviation Authority regularly posts on social media its information and activities, including **information about business partners**, conference participation and staff highlights.



Department of Health publishes on its website information such as seawater sampling results, a **Registered Day Care Providers and Licensed Day Care Centres Database** and Grades on Food Establishment Licenses.

.....

The Financial Intelligence Agency publishes on its website its **consultation papers, statistics, information bulletins, policies and procedures**, Audited Financial Statements, Annual Reports, case studies and typologies.

.....

Ministry of Health Headquarters publishes on its website information about its work and publications, including the Bermuda Health Strategy 2014-2019, public consultation documents, **a library of public records** and the Ministry of Health's Roadmap.

.....

Office of the Auditor General publishes its **dashboard** on its website of all clients with the last accounts audited for each entry and the audits currently in progress to keep the public and other stakeholders informed of its audit status.

.....

The Ministry of Education and Department of Education recently **upgraded their website**. To increase the release of information to the public, each school and section within the Department of Education has a page on the website with important documents and various information about it.

.....

Office of the Clerk to the Legislature publishes **a listing of all Parliamentary Committee meeting dates and times** and the Order Papers for meetings of the House of Assembly and the Senate, and streams an audio of the proceedings of both the House and the Senate on Parliament's website.

.....

The Bermuda Health Council publishes **Behind the Scenes** (a summary of its activities); **reports on health systems trends; facts sheets; data briefs; data tables**; employers' compliance information and BHeC governance documents, Board and Secretariat information.

.....

Corporation of Hamilton publishes its annual Financial Statements, annual Budget Reports and **minutes and agendas for all Board and Committees meetings** on its website.

.....

Bermuda Regiment publishes its **Standing Orders**.

WHAT WE DO ENFORCING THE RIGHT

2019 Inaugural Information Commissioner's Award for outstanding Information Officers

Information Officers have a critical responsibility in the PATI framework. Often, the Information Officer is the first and only person that a PATI requester interacts with at a public authority when making a PATI request. In 2019, Information Commissioner Gutierrez introduced the inaugural Information Commissioner's Award for outstanding service as an Information Officer in the areas of Communication, Innovation, Leadership and Service. The Information Commissioner's Award provides an opportunity to recognise individuals for their hard work and dedication in support of public access to information.

The recipients of the awards were announced during the ICO's Information Officer's Appreciation Reception held on Friday, 27 September 2019.

Information Commissioner Gutierrez presented the 2019 Awards to Awardees **Ms. Debra Goins-Francis of the Bermuda Hospitals Board and Inspector David Geraghty of the Bermuda Police Service.**

In 2019, the Information Commissioner also recognised additional Information Officers and others within public authorities who have been at the vanguard of implementing the PATI Act during its initial years (2015-2018) and who, from the perspective of the Information Commissioner, have provided service during a distinct time in the historical development of the PATI Act.

Those recognised were Michael Soares (Department of Information and Digital Technology); Pamela Burrows and Denise Saunders (Ministry of Finance Headquarters); Karla Lacey (Bermuda Tourism Authority); Sharmette Pond and Karen Dill (Customs Department); Deborah Levine (Bermuda Land Development Company Ltd.); Carlita O'Brien (Department of Human Resources); Dr. Danette Ming (Immigration Department); Verlina Bishop (Department of Health); and Robin Skinner, Joshua Correia and Sarah D'Alessio (Ministry of Health Headquarters).



2019 Inaugural Information Commissioner's Award recipients for Outstanding Information Officers

2019 PUBLIC AUTHORITIES' STATISTICS

(1 JANUARY 2019 – 31 DECEMBER 2019)

Since 1 April 2015, section 58(3) of the PATI Act has required public authorities to report their annual statistics to the Information Commissioner for publication. The expanded compliance-related efforts that the ICO initiated in 2018 continued in 2019. The ICO Annual Return included a reporting form for public authorities to record and submit their PATI statistics to the Information Commissioner.

2019 Public Authorities' Statistics

	Number of Public Authorities	Percentage of Total Number
Received PATI requests	40	20
Did not receive any PATI requests	152	76
No statistical information provided	4	2
Under review	4	2
Total	200	100

Noncompliance with section 58(3) statistics reporting

While the Information Commissioner has enforcement authority concerning other requirements with the PATI Act, the Information Commissioner lacks such order making power to compel compliance with the requirement in section 58(3) of the Act for public authorities to submit their PATI statistics for the Information Commissioner's Annual Report.

After unsuccessful efforts to encourage compliance with section 58(3), the Information Commissioner notified the public authorities below that they would be listed in the 2019 Information Commissioner's Annual Report as noncompliant with section 58(3) of the PATI Act:

- Bermuda Casino Gaming Commission
- Board of Trustees Whitney Institute
- Professional Surveyors Registration Council
- Smiths Parish Council

"Many thanks for your support!!
Without [the ICO] I am totally
convinced that the [public authority]
would have continued to ignore our
requests for information."

Applicant

2019 PATI requests

There were 91 new PATI requests for access to records made in 2019 under section 13 of the PATI Act. Another 9 PATI requests for records were reported as pending at the end of 2018 and were carried over to 2019. The public authorities with the highest number of new 2019 requests reported to the ICO were the Bermuda Police Service (14 requests) and the Regulatory Authority of Bermuda (7 requests). The Ministry with the highest number of reported requests (excluding the Bermuda Police Service) was the Ministry of Legal Affairs, with 13 requests received by its various departments.

	2016	2017	2018	2019
Total PATI Requests				
Reported new requests	145	143	133	91
Reported requests carried over from prior year	24	10	11	9
Total requests in processing for year	169	153	144	100

2019 PUBLIC AUTHORITIES' STATISTICS

The reported outcomes of these requests are listed in the table below.

	2016	2017	2018	2019
Initial Disposition of PATI Requests (as at year end)				
Pending	9	10	6	8
Access granted in whole	65	56	59	31
Access granted in part	27	15	22	22
Access refused in whole	54	54	49	27
Unknown	11	18	7	12

In 2019, public authorities reported receiving 0 new requests under section 19 of the PATI Act to amend a record of personal information.



Percentage of initial decisions by public authorities granted access to public records in whole or in part

53%



Number of times personal information exemption invoked by public authorities

8

2019 PUBLIC AUTHORITIES' STATISTICS

Public authorities must report on the number of times they invoke exemptions and rely on administrative grounds to deny access in the initial response to a PATI request. In 2019, the most commonly invoked exemptions were for personal information, followed by exemptions for information received in confidence and operations of public authorities. The number of refusals based on administrative denials continued to be high. On a positive note, refusals dropped significantly due to records not existing or being found. Public authorities also relied more on the provision in section 4, which excludes certain records from the scope of the PATI Act.

		2016	2017	2018	2019
Reasons for Refusal in Initial Decision					
s.4	Inapplicability of PATI Act	0	0	2	6
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	32	20	30	11
s.16(1)(b)	Administrative refusal because insufficient information in request	1	7	4	0
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	6	4	2	2
s.16(1)(d)	Administrative refusal because publication of information is required by law within 3 months	1	0	0	1
s.16(1)(e)	Administrative refusal for vexatious request	0	0	2	0
s.16(1)(f)	Administrative refusal because information is already in public domain	3	4	2	6
s.16(1)(g)	Administrative refusal because fee payable under section 20 not paid	1	0	2	3
s.22	Health or safety	0	0	0	0
s.23	Personal information	11	13	9	9
s.25	Commercial information	12	7	11	4
s.26	Information received in confidence	12	3	3	6
s.27	Cabinet documents	1	1	2	0
s.28	Ministerial responsibility	4	0	0	0
s.29	Deliberations of public authorities	6	4	2	0
s.30	Operations of public authorities	10	1	3	6
s.31	Financial and economic interests	0	0	1	0
s.32	National security, defence and international relations	2	1	0	1
s.33	Governor's responsibilities	0	1	1	0
s.34	Law enforcement	3	5	4	5
s.35	Legal professional privilege	2	2	5	3
s.36	Contempt of court and parliamentary privilege	0	0	0	2
s.37	Disclosure prohibited by other legislation	3	10	9	2
s.38	Non-disclosure of existence of a record	2	0	1	3
	Failure to decide	2	1	1	3

2019 PUBLIC AUTHORITIES' STATISTICS

Public authorities also reported that individuals sought internal reviews 19 times in 2019. The dispositions of the internal reviews are shown below.

	2016	2017	2018	2019
Dispositions of Internal Reviews				
Pending	3	3	3	5
Grant access in whole	2	1	1	1
Grant access in part	4	1	1	5
Refuse in whole*	18	9	12	8
Procedural issues**	2	0	0	0
Referred to Commissioner	3	11	0	0
Total reported internal review decisions	32	25	17	19

*Failure to issue a timely internal review decision deemed a refusal in whole.

**Includes issues such as failure to comply with timeframes or a transfer to another authority.

"The response to my second-time-around request to [the public authority] has been almost immediate, thanks to you. It certainly pays knowing what to do."

(Member of the public)

2019 PUBLIC AUTHORITIES' STATISTICS

The reasons invoked by public authorities' in 2019 to refuse PATI requests at the internal review stage are captured in the following table:

		2016	2017	2018	2019
Reasons for Refusal in Initial Review Decision					
s.4	Inapplicability of PATI Act	0	0	1	4
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	4	2	1	2
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	5	0	0	0
s.16(1)(d)	Administrative refusal because publication of information is required by law within 3 months	1	0	0	0
s.16(1)(e)	Vexatious request	0	1	1	0
s.16(1)(f)	Administrative refusal because information is already in public domain	0	0	0	3
s.23	Personal information	3	4	1	2
s.25	Commercial information	2	5	1	1
s.26	Information received in confidence	6	3	1	4
s.27	Cabinet documents	0	0	1	1
s.28	Ministerial responsibility	0	1	1	0
s.29	Deliberations of public authorities	2	2	1	0
s.30	Operations of public authorities	3	2	0	1
s.32	National security, defence and international relations	0	1	0	0
s.33	Governor's responsibilities	0	1	1	0
s.34	Law enforcement	0	1	4	1
s.35	Legal professional privilege	0	0	2	2
s.36	Contempt of court and parliamentary privilege	0	0	0	1
s.37	Disclosure prohibited by other legislation	2	0	0	0
s.38	Non-disclosure of existence of a record	0	0	0	1
	Failure to decide	6	1	0	0
	Request for internal review out of time	1	0	0	0



IMPROVING ACCESS TO INFORMATION

Personal Information Protection Act 2016 (PIPA)

The Information Commissioner welcomes the appointment of Bermuda's first Privacy Commissioner, Alexander M. White in January 2020. A robust information rights regime includes both the right to access public records and information as well as corresponding protections for privacy rights. While access to public records has been in place since 2015, the opening of the Office of the Privacy Commissioner is the first step in completing Bermuda's information rights framework.

Bermudians and residents of Bermuda: critical stakeholders

It is critical that any changes to the PATI Act affecting the public's PATI rights must involve robust consultation with Bermudians and residents as critical stakeholders. The value of PATI rights as a tool for democratic accountability requires the public to have a voice when changes to the Act are considered.

This has not been the case to date. Between 2015 and February 2019, 19 amendments have been passed to the PATI Act or other legislation that have impacted the rights under the PATI Act. Some amendments have been consistent with a robust regime of public access to information. Other amendments have removed information and records from the scope of the PATI Act (a key tool for public accountability)

or otherwise weakened PATI rights for Bermudians and residents of Bermuda. All of the amendments, including those lessening PATI rights, have been introduced and adopted without consultation with the wider public who benefits from the rights.

After five years of the PATI Act, all stakeholders are beginning to develop sufficient experience and data to evaluate how public access to information is working in Bermuda and areas where the framework and practice can be strengthened. With the future implementation of PIPA, harmonising amendments will also be necessary to ensure the two Acts operate efficiently and coherently for everyone. The Information Commissioner's review of the implementation of the PATI Act will also be issued in the upcoming year. The Information Commissioner's review draws upon assessments conducted by two respected international organisations and will offer recommendations for consideration by policymakers and the public.

As these developments move forward, the public must ensure it remains an engaged stakeholder concerning its PATI rights. The potential for the PATI Act to be a powerful tool for democratic accountability will only be fully realised when Bermudians and residents embrace and demand that their PATI rights are safeguarded.

Minister's Practice Code on the Administration of the PATI Act

One of the most significant improvements to the PATI regime is the promulgation of the Minister's Section 60 Practice Code on the Administration of the PATI Act. The Practice Code provides practical, how-to advice for officers in public authorities striving to fulfill their responsibilities under the PATI Act.

The Information Commissioner recognises the work of the Policy and Strategy Section of the Cabinet Office. This team has ensured that the PATI Practice Code is a comprehensive and invaluable resource for public authorities that draws upon international best practices for access to public information.

Section 60 of the PATI Act also requires the Minister for the PATI Act to issue a practice code on records management to facilitate ready access to public records. The Information Commissioner recognises that the Government is currently

engaged in a broader assessment and reform of its record management resources, policies and practices. Following these efforts, the Minister's practice code on records management will establish an essential part of the infrastructure necessary to support both the PATI and the PIPA frameworks within public authorities.

Anonymous requests and universal access

The Information Commissioner continues to call for universal access to nonexempt public records—the only means to allow Bermudians and residents of Bermuda to submit PATI requests anonymously, through the use of a pseudonym.

In this micro-community, some individuals submitting PATI requests have concerns that their confidentiality may not be maintained or that they may risk negative consequences for making a PATI request. Other times, the requirement to personally come into a public authority and to produce a passport or other identification may be an intimidating barrier to accessing public information, particularly for more marginalized populations.

The lack of universal access also creates risk for public authorities. PATI requesters might initiate legal actions in response to a breach of their confidentiality, which could result in financial liability for settlements or other legal costs. Public authorities may also find themselves unnecessarily retaining copies of personal identification documents, such as passports or driver's licenses, that could increase their liability risks in the future under PIPA. For the sake of Bermudians and residents of Bermuda, and for the benefit of public authorities, the Information Commissioner again urges the Government to strengthen and safeguard the public's right to access public information by allowing for the filing of anonymous PATI requests.

STRENGTHENING THE ORGANISATION

Office relocation

The ICO moved into its new office space in February 2020, co-locating with the Office of the Privacy Commissioner. This new office provides adequate, secure office space for casework, along with outward facing training and meeting spaces to support the ICO's guidance and outreach activities. The ICO also acquired a new phone number, completing the ICO's full migration onto an infrastructure independent of the Government of Bermuda.

The ICO's new contact details are:

Maxwell Roberts Building
4th Floor, One Church Street, Hamilton HM11
441-543-3700

Training and staff development

The professional officers of the ICO remain the Information Commissioner's most valued resource for serving the public, public authorities and other stakeholders. The ICO officers attended the following trainings and conferences to strengthen stakeholder relationships, change leadership and investigation skills, and information management knowledge:

Introduction
to Blockchain
& Fintech

Shaping
and Managing
Culture
in the Public
Sector

Access to
Information
Investigations
Training

WeSpeak
Boot Camp

10th
Ombudsman
Caribbean
Ombudsman
Association
Conference

Basics &
Beyond
Basics of
Blockchain

CPA Bermuda
Practical
Project
Management

Appreciative
Inquiry

International relationships

The International Conference of Information Commissioners (ICIC)

Established in 2019 Johannesburg, South Africa, the International Conference of Information Commissioners (ICIC) is the first and only international body of Information Commissioners. The ICIC's vision is "to be the global forum which connects member Information Commissioners responsible for the protection and promotion of access to information laws in order to improve transparency and accountability to the benefit of everyone".

Continuing the ICO's ongoing support and relationship with the ICIC, Information Commissioner Gutierrez has served on the 16-member Governance Working Group that has provided coordination of the ICIC during 2019-2020. With the support of the ICIC Secretariat, the Governance Working Group has approved updated procedures for the ICIC, reviewed and approved accreditation for new ICIC members, and provided strategic direction and leadership. The ICIC is an important international resource for strengthening Information Commissioners' role in promoting public access to information.

In January 2020, the ICIC approved the Information Commissioner for Bermuda as an accredited member of the ICIC, with Information Commissioner Gutierrez recused from consideration of Bermuda's application.

Specialised public access to information training

Specialised public access to information investigation training is not available locally, and the ICO often relies upon its overseas partners to enhance the ICO officers' skills set. In March 2020, Sean Murray, the Director of Research and Quality Assurance at the Office of the Information and Privacy Commissioner for Newfoundland and Labrador, returned to the ICO to provide specialized access to information training to the ICO Investigation Officers. Mr. Murray is familiar with the ICO's investigation procedures from his work with this office in 2017. The Investigation Officers had the opportunity to work one-on-one with Mr. Murray.

Finances

The ICO proactively publishes details of its financial decisions and public expenditures. Its budget for the fiscal year ending 31 March 2020 was \$1,057,093. For information about the ICO's budget, salary scales, contracts and audited financial statements, please visit www.ico.bm. If you want to know additional information, just ask! You may email the ICO at info@ico.bm

Mission of the ICIC

To share knowledge and best practices, to build capacity, to help identify what is needed for global progress and to act as a collective voice in international fora with a view to improving people's right to public information and their ability to hold to account bodies that provide public functions



You can read more about the ICO's training and conferences in the ICO's Monthly Roundups, which are available on www.ico.bm.

LOOKING AHEAD

The upcoming year begins my second term as Information Commissioner. I very much look forward to building upon the success of the ICO in establishing a strong good governance oversight institution that strives to serve all stakeholders with integrity. Our mandate is clear: to promote access to public information in furtherance of the purposes of the PATI Act.

Throughout 2020, the theme of our work will be 'Championing Transparency'. We will recognise the PATI requesters, Information Officers and others who champion the importance of providing information to the public about the policies, programmes, spending and decisions that impact Bermudians and residents. The ICO will continue to safeguard the important relationship between public access to information, freedom of the press and freedom of expression. The ICO's leadership will continue to encourage, celebrate and protect a robust transparency framework for Bermuda.

As I write, Bermuda is in the midst of the COVID-19 pandemic. This public health crisis has shown that our community expects and appreciates accurate and timely information from the Government. The Government has responded by coordinating daily briefings, sharing its updates and decision making as the crisis evolves. The Government's openness has allowed those outside of the public sector to clearly understand what is at stake, offer support when gaps in services manifest and respond when help is needed for our most vulnerable residents. Collaborations materialized on solutions ranging from repatriating Bermudians from overseas and to managing neighbourhood trash collections. Championing transparency and engagement has become a trait of this 'new normal' and the safety and survival of our community depends on it.

When the crisis subsides and we return to our routines, our community will have the opportunity to reflect back on the outcome of the decisions made by the Government today. Bermudians and residents may praise the Government's response as life-saving or, alternatively, critique it as an overreaction. Critically, this will be a dialogue based on engagement. One in which the Government has endeavored to be as transparent as possible while the public is evaluating Government's decisions from an informed and involved perspective.

This provision of accurate and timely information, meaningful dialogue, and public accountability are exactly what the PATI Act tries to achieve. Imagine if this relationship based on heightened transparency, mutual engagement and respect for all stakeholders is further encouraged and continues beyond this crisis. Championing transparency envisions this future.

Bermudians and residents must be aware of and safeguard their rights under the PATI Act to make this future a reality. Change is in the wind for the PATI Act and Bermuda's future. It may arise from the long-term impacts of the COVID-19 pandemic, the need to harmonise the PATI Act and the Personal Information Protection Act, or the recommendations from reviews of the PATI Act's operations during the last five years. Central to these changes are the rights under the PATI Act that benefit Bermudians and residents of Bermuda. The power rests in your hands to defend and use your rights to ask for the public information that impacts your lives. Throughout this process, the ICO will be championing transparency for the benefit of all of Bermuda.

GITANJALI S. GUTIERREZ

Information Commissioner

“Imagine if this relationship based on heightened transparency, mutual engagement and respect for all stakeholders is further encouraged and continues beyond this crisis. Championing transparency envisions this future.”

*ICO team at the
Right to Know
Day Declaration
at City Hall in
Hamilton*

*Annual Report
photo credits:
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