

MONTHLY ROUNDUP

Volume III, Issue 4

JULY 2020

WELCOME

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

The ICO's theme this year is "**Championing Transparency**". This theme recognizes that information has power. Championing transparency encourages decision makers in public authorities to remember how valuable it is for the community to have timely, accurate and accessible information. It also encourages Bermudians and residents to use their PATI rights to ask for what they want and need to know, rather than only receiving what public authorities decide to make public.

Using PATI rights is a tool of empowerment for those who choose to take the initiative and simply ask for what they want to know. Championing transparency happens when Bermudians and residents use their PATI rights to normalize asking for more from public authorities: more details, more evidence, more information. When each corner of Bermuda's community advocates for transparency about legal, financial, policy and other decisions made for the community's benefit, accountability is established. Championing transparency encourages the community to expect transparency around government's decisions. It requires the community also to take the initiative to use their PATI rights and to ask when they require more information.

Championing transparency puts the power of information in the hands of Bermudians and residents.

IN THIS ISSUE:

- Recent Information Commissioner's decisions
- ICO monthly recap: Statistics for ICO cases
- "**Learning More**" series continues - Public access to information, financial recovery and employment

"PATI requesters are everyday people who want to be informed, involved and included members of the community." - Excerpt from the ICO Annual Report 2019



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"Ultimately, the most significant beneficiaries of the PATI Act remain Bermudians and residents who hold enforceable, powerful PATI rights."
- Excerpt from Information Commissioner Gutierrez's Welcome message, ICO Annual Report 2019

DECISIONS ISSUED

In July 2020, the Information Commissioner received 1 new application and issued 2 decisions. Highlights from the decisions are below.

Can a PATI requester learn more about the management of a public contract? Yes, including how much money was actually spent and what services were provided.

In **Decision 06/2020**, Regulatory Authority, the Information Commissioner considers the Regulatory Authority's refusal to disclose a number of records, including contractual records, relating to the 2015 Market Review. The Regulatory Authority's 2015 Market Review was meant to assess the state of the telecommunications market in Bermuda, including if any telecommunications provider held a significant market power. Deloitte was selected as the vendor to conduct the market review in early 2016, but the review was never completed.

The Information Commissioner agreed with the Regulatory Authority that parts of the withheld records related to Deloitte's rates by resource level are exempt under section 25(1)(d) of the PATI Act because disclosure could prejudice Deloitte in its future contract negotiations. In light of the limited submissions on section 25(1)(d), however, the Information Commissioner found that this exemption did not apply to the remainder of the responsive records. **Decision 06/2020** reminds public authorities that they have the burden to show to the Information Commissioner that their decisions to withhold public records are in accordance with the PATI Act.

This Decision also reminds Bermudians and residents that they have the right to ask for records about public authorities' spending. Not only does the public have the right to know the amount of money spent by public authorities on a certain project, the public also has the right to be informed of how that money was spent and the outcome (or lack thereof) of the publicly-funded project. Access to these types of records can only be denied if the public authority shows the Information Commissioner that there is a legitimate reason to do so under the PATI Act and, in some cases, also shows that the public interest does not require disclosure.

Can a similar PATI request be made to different public authorities? Yes, read [Decision 07/2020, Office of the Governor](#) to learn what can happen.

Sometimes a PATI requester may benefit from submitting their request on the same topic to multiple public authorities. This might happen if several public authorities are involved with a project or area of work. Records on a specific project or area of work that are held by one public authority might not be the same records that are held by another. Also, keep in mind that one public authority may have a policy of holding records longer than another public authority. Each public authority is required to respond to the PATI requests it receives. As a result, a PATI requester might receive a set of records from one public authority, but not from another, on the same topic or about the same work.

DECISIONS ISSUED, *cont.*

Decision 07/2020, Office of the Governor, considers Government House's refusal of a PATI request for records of its correspondence with the UK Foreign and Commonwealth Office, the US authorities and the Bermuda Government about the four Uighur men transferred from Guantanamo Bay to Bermuda in June 2009. This PATI request was related to two other PATI requests on the same topic that were submitted to the Department of Immigration and the Cabinet Office (see **Decisions 18/2019** and **04/2020**). Although the PATI requests filed with Government House, the Department of Immigration and the Cabinet Office were all related to the transfer of the men, the records that the requester received from each public authority were different.

A PATI requester has the right to ask if more than one public authority holds the records that they are looking for. It is important to remember that public authorities are required to transfer a PATI request to another public authority only if they did not hold any of the records being sought.

ICO STATISTICS AS OF 31 JULY 2020

(from 1 April 2015)

Total applications for independent review	Closed: Decided	66
by the Information Commissioner138	Closed: Resolved	15
Pending investigations	Closed: Abandoned	7
Applications pending validation	Closed: Invalid	19

SAVE THE DATES

Information Commissioner's *Virtual* Quarterly Briefing

Thursday, 17 September

10:00am - 11:00am

Topic: Section 16(1)(e) administrative denials for frivolous or vexatious requests.

Registration is limited. RSVP details will be sent directly to public authorities.

International Right to Know Day

28 September 2020

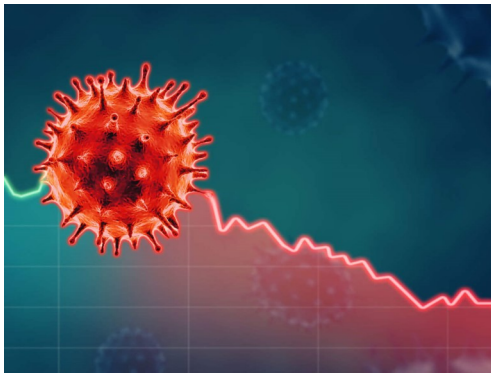
Right to Know Week 2020

28 September - 2 October



PUBLIC ACCESS TO INFORMATION, FINANCIAL RECOVERY AND EMPLOYMENT

In the ICO's new 'Learning More' series, we focus each month on how PATI rights are effective tools that enable Bermudians and residents to learn more about important topics of the day.



Change is one certainty in uncertain times—and Bermuda continues to face a changing local and global economy. Following COVID-19, Bermuda has focused its collective attention to economic development, financial recovery and employment. Many Bermudians and residents are facing financial stress, or are in financial crisis. Others are seeing their businesses reopen or jobs restart. Almost everyone has been financially impacted in some way by the effect of COVID-19, including the government. Currently, the government continues to focus on implementing Bermuda's public health-related initiatives, while also

managing the financial crisis. This has led to the realignment of resources and services, rapid amendments and emergency responses.

What does the PATI Act have to do with financial recovery and employment?

Using PATI rights can help empower any solutions-focused individual with the records they need to make data-supported contributions toward the larger discussion of Bermuda's collective economic survival. It also empowers Bermudians and residents to hold government to account for past and future financial decisions during a time of economic crisis. Consider the following:

- Do you want to know more about the details of the unemployment payments or changes to financial assistance?
- Do you want to evaluate the procurement and contracting processes during the period of government's initial response to COVID-19 or that are happening now?
- Would you like to know more about the government's spending decisions in the face of financial constraints?

Keep in mind also that since the PATI Act came into effect in March 2015, public authorities are required to gazette any contracts for goods or services that have a total value of \$50,000 or more. These notices can provide a quick snap-shot of the vendors, goods and services that public authorities are using. These notices are published in the Official Gazette on the government website at www.gov.bm.

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PUBLIC ACCESS TO INFORMATION, FINANCIAL RECOVERY AND EMPLOYMENT, *cont.*

Here are some examples of COVID-related financial public access topics raised internationally:

- The Open Contracting Partnership has published guidelines on Emergency procurement for COVID-19: Buying fast, open and smart. A PATI requester may want more information to decide how Bermuda measures up to the transparent and open emergency procurement guidelines – and may want to highlight any needed improvements if we face a second wave. Learn more [HERE](#).
- In Iowa, United States, one newspaper made a successful public access request for a list of businesses that benefitted from a “Payroll Protection Program” which enabled certain banks to provide expedited federal loans with the majority of funds being forgivable if used to pay payroll and other specific expenses. The publication of the list enables, for example, employees to see if their employer is listed. It also included the number of jobs retained and demographic breakdowns of business ownership. Learn more [HERE](#).
- In Jersey, Channel Islands, a recent public access request revealed the results of the Locate Jersey initiative designed to encourage ‘high net worth’ individuals to move to Jersey under a targeted residency program. Learn more [HERE](#).
- In Scotland, a public access to information request disclosed that the government spent nearly \$6 million on public health advertising in response to COVID-19. The records also explained how much of the public funds were spent with local media and how much on digital platforms such as Facebook and TikTok. Learn more [HERE](#).

Missed the other installments in our “Learning More” series? Here’s what you may have missed:

- *Crime*, [June 2020 ICO Monthly Roundup](#)
- *Social Justice*, [April/May 2020 ICO Monthly Roundup](#)

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