

CHAMPIONING TRANSPARENCY



ANNUAL REPORT 2020



2020 HIGHLIGHTS

“Like this tiny, endemic flower, the work of the Information Commissioner has solidly taken root across Bermuda, persistently blooming in the most challenging environments and becoming a recognisable part of the Bermuda landscape.”

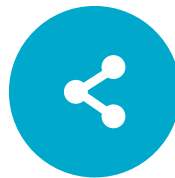
Information Commissioner's Welcome. P. 2



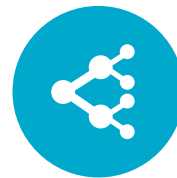
8 Monthly
Roundups
published
P. 12



4 New
public awareness
videos released
P. 13



9,100+
Engagements for
social media posts
P. 14



192,300+
Reach for social
media campaigns
P. 14



67 Email, phone call and visitor inquiries logged by ICO officers in 2020



80% of the public believes that creating and enforcing the PATI Act is a very important public investment
[P. 16](#)



114 Individuals attended the Information Commissioner's Virtual Quarterly Briefings
[P. 16](#)



97% of public authorities submitted their 2020 ICO Annual Return
[P. 29](#)



21 New applications for an independent review by the Information Commissioner in 2020
[P. 19](#)



48% of public authorities' initial responses in 2020 to a PATI request granting access in whole or in part to the public records
[P. 35](#)



17 Decisions issued by the Information Commissioner in 2020
[P. 23](#)



27% more PATI requests made in 2020 compared to 2019
[P. 35](#)



“The right to access public records is more than a keystone for public accountability. It enables our community to reflect on, and understand, how and why decisions and actions were taken. This informs our ability to do even better in future crises. Our continuing growth as a country is only possible when the Government and other public authorities are fully transparent, respect good information management and uphold access to public information.

*Information Commissioner's Statement on Access to Information
During National Crisis, 6 April 2020*

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- The Information Commissioner's *Report and Recommendations on the Implementation of the PATI Act 2010* is appended to this Annual Report, as required by section 57(5) of the PATI Act.

*Transmittal
Laid before each House of the Legislature in March 2021, as
required by section 58(1) of the Public Access to Information
Act 2010.*

WELCOME

WELCOME



I am especially pleased to welcome you to the 2020 Annual Report of the Information Commissioner, which offers an overview of the operations of the Public Access to Information (PATI) Act during the 2020 calendar year, as well as highlights the work of the Information Commissioner's Office (ICO) during our 2020-2021 fiscal year (1 April 2020 to 31 March 2021).

With the passage of the PATI Act in 2010 and its implementation in 2015, the institution of the Information Commissioner was established as the good governance body mandated to safeguard, promote and enforce access to public information in Bermuda. Our work in 2020 reflects six years of growth for the ICO since that time.

When the global COVID-19 pandemic reached Bermuda's shores, public decision makers navigated the people of Bermuda through an unprecedented time in history. The ongoing financial crisis that flowed from the pandemic reinforced that public access to information is a keystone for public accountability and transparency. Accurate and timely information from public authorities was, and continues to be, critical for both community and individual health, well-being and economic survival.

Even though the Information Commissioner received fewer applications for independent reviews and issued fewer decisions in 2020, this is consistent with trends among many Information Commissioners in other countries. This year, the ICO placed more emphasis on educating the public about their rights under the PATI Act. To support the public's right to know, the ICO released four new public education videos that encourage Bermudians and residents to recognise how empowering it can be to take action and exercise their PATI

rights. These videos were viewed over 20,000 times across our social media platforms, and our various social media campaigns had a reach of over 192,000.

With each PATI request made by Bermudians and residents, access to public information in Bermuda strengthens and extends deeper roots into our community. Even with months of sheltering-in-place, Bermuda saw a 27% increase in the number of new PATI requests filed in 2020, as compared to 2019.

Despite the challenges of remote working and COVID-19, public authorities and those public officers who are involved in PATI work should be commended. In 2020, 49% of public authorities' initial responses to PATI requests granted access in whole or in part to the public records requested. We also saw an increase in the number of public authorities who submitted timely 2020 ICO Annual Returns, as compared to 2019, with growing attention placed on gazetting the details of contracts with a total value of \$50,000 or more. These are clear examples of public authorities' increased understanding and acceptance of public access to information as an integral part of Bermuda's public sector.

I am proud to say that the ICO met the challenges of 2020 and emerged a stronger institution. This, in turn, has enabled us to provide consistent guidance for, and oversight

of, public authorities as they meet their obligations under the PATI Act. It has also enabled us to remain responsive to the rights of PATI requesters. I extend my gratitude to the officers of the ICO for making this possible. In the face of the COVID-19 pandemic, salary reductions, an austerity budget and remote work, they remain dedicated to the mandate of the Information Commissioner. The accomplishments set out in my 2020 Annual Report reflect the collective work and talent of these exceptional individuals.

Images of Bermuda's national flower, the Bermudiana (*Sisyrinchium bermudiana*), are infused throughout this year's Annual Report for a myriad of reasons. In 2020, more than in any year, the ICO embodied the characteristics that I associate with the Bermudiana. Like this tiny, endemic flower, the work of the Information Commissioner has solidly taken root across Bermuda, persistently blooming in the most challenging environments and becoming a recognisable part of the Bermuda landscape.

GITANJALI S. GUTIERREZ
INFORMATION COMMISSIONER

“With each PATI request made by Bermudians and residents, access to public information in Bermuda strengthens and extends deeper roots into our community.”

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

Reinforce public authorities' compliance with the PATI Act

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

In carrying out her mandate, the Information Commissioner is guided by the principles of independence, integrity and fairness.

ICO TEAM



GITANJALI S. GUTIERREZ
INFORMATION COMMISSIONER



ANSWER STYANNES
INVESTIGATION OFFICER



LAKAI DILL
INVESTIGATION OFFICER



SHEENA BASSETT
PROJECT OFFICER



TIKITTA SUHARTONO
OFFICE MANAGER



JENNIFER TROTT
TEMP, ADMINISTRATIVE ASSISTANT

ICO 2020 TIMELINE

APRIL 2020 - MARCH 2021

APRIL 2020

- ICO's remote work platform continues during shelter-in-place, ensuring that the ICO maintains operations and investigations
- Information Commissioner's *Statement on Access to Information During National Crisis* issued
- Information Commissioner Gutierrez is a signatory to a statement issued by the International Conference of Information Commissioners on *Access to information in the context of a global pandemic*

MAY 2020

- Information Commissioner Gutierrez participates in Governance Working Group's virtual meeting for the International Conference of Information Commissioners

JUNE 2020

- ICO hosts presentation for independent public offices on the Personal Information Protection Act 2016 by the Privacy Commissioner for Bermuda, Alexander White
- Information Commissioner's first Virtual Quarterly Briefing for public authorities held
- Bermuda Hospitals Board discontinues judicial review of Decision 24/2019, and discloses the total costs ranges for its Executive Team members
- *Learning More* series started in Monthly Roundup
- ICO transitions to a hybrid remote and in-person work environment, continuing to maintain operations and investigations

JULY 2020

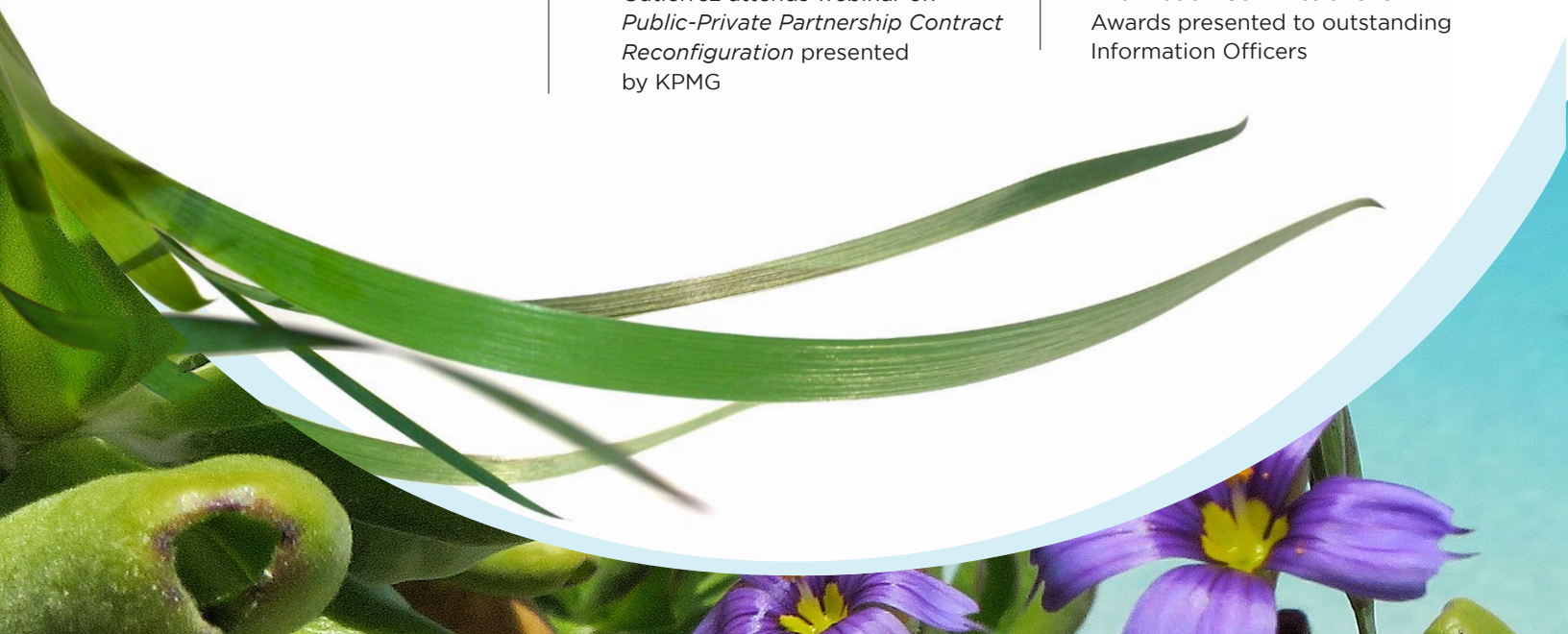
- Information Commissioner Gutierrez attends webinar on *Public-Private Partnership Contract Reconfiguration* presented by KPMG

AUGUST 2020

- ICO adopts financial austerity measures and commits to cost savings of \$184,493, inclusive of reductions in salaries and expenses
- *Investigator's Insight* series started in Monthly Roundup

SEPTEMBER 2020

- Information Commissioner Gutierrez participates in Governance Working Group's virtual meeting for the International Conference of Information Commissioners
- Information Commissioner's Virtual Quarterly Briefing for public authorities held
- Information Commissioner Gutierrez presents *Governance Implications: PATI Act* for the Regulatory Authority of Bermuda
- Information Commissioner Gutierrez delivers International Right to Know Day Declaration
- Information Commissioner Gutierrez interviewed on *The Daily Hour* on The Full 100 online radio programme
- Information Commissioner's Awards presented to outstanding Information Officers



OCTOBER 2020

- *I Want to Know* series of four public awareness videos released
- Information Commissioner Gutierrez interviewed by Bermuda Broadcasting Company about launch of video series

NOVEMBER 2020

- ICO staff attend *Code of Practice for Project Management and Procurement (2nd ed.)* presentation by the Office of Project Management and Procurement
- ICO 2020 Annual Return package distributed to public authorities
- ICO published *Guidance: ICO Annual Return (Part 2 and section 58(3))*
- ICO's audited Financial Statements for the year ending 31 March 2019 submitted to Parliament, showing an unqualified audit opinion for a fourth consecutive year

DECEMBER 2020

- Information Commissioner's Virtual Quarterly Briefing for public authorities held
- The ICO provides fifty gift bags of youth-focused promotional items to The Family Centre for families in need

JANUARY 2021

- Information Commissioner Gutierrez interviewed by Bermuda Broadcasting Company to discuss five years of PATI rights
- Attorney-General brings judicial review challenge to the Information Commissioner's issuance of summonses

FEBRUARY 2021

- Investigation Officer completes Privacy Officer Foundation and Practitioner certification courses facilitated by the TLC Group

MARCH 2021

- Information Commissioner's Virtual Quarterly Briefing held
- Information Commissioner Gutierrez issues *Report and Recommendations on the Implementation of the PATI Act 2010*
- Project Officer completes *Social Media Advertising* course with Coursera
- Information Commissioner and Investigation Officer attend *We Are Connected* virtual conference for the access, privacy, and information security and information management community, co-sponsored by the Office of the Information and Privacy Commissioner of Newfoundland and Labrador



PUBLIC ACCESS TO INFORMATION ACT 2010

PURPOSES OF THE PATI ACT (SECTION 2)

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

Give the public the right to access public information to the greatest extent possible, consistent with the provisions of the PATI Act

Increase transparency and eliminate unnecessary secrecy with public information

Increase public authorities' accountability

Inform the public about public authorities' activities, including how and why decisions are made

Have more information placed in the public domain

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
- Receiving, when asked for, an independent review by the Information Commissioner

*Fees may be required for receiving hard copies of records.

RIGHTS UNDER THE PATI ACT (PART 3)

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:

Access non-exempt records held by public authorities

Have their identity kept confidential when making a PATI request

Receive assistance from public authorities in connection with PATI requests

Request an incomplete, incorrect or misleading record of personal information be amended

Receive complete, accurate and timely decisions by public authorities

Receive, when asked for, an internal review by the head of the public authority and an independent review by the Information Commissioner

Seek leave for judicial review of any decision by the Information Commissioner

PATI requesters have **a right to initial and internal review decisions** by the public authority 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

Inform requesters about the rights to reviews of the decision

PROACTIVE PUBLICATION (PART 2)

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:

Information Statement that provides various information about the public authority

Salary ranges of all public officer positions (published annually)

Log of PATI requests and their outcomes (without identifying the requesters)

Quarterly expenditures

Details of every contract for goods or services with a total value of \$50,000 or more

To learn more about the Information Commissioner's oversight of Part 2 of the PATI Act, see the Compliance Oversight section, pages 28 to 33.

HOW TO MAKE A PATI REQUEST

BE INFORMED, INCLUDED AND INVOLVED —

MAKE A PATI REQUEST!

MAKE A PATI REQUEST

STEP 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.

STEP 2

DECIDE WHICH PUBLIC AUTHORITY PROBABLY HAS THE RECORDS THAT YOU WANT.

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

STEP 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.

STEP 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 decisions on your PATI request you have the right to:

- An internal review by the head of the public authority,
- An independent review by the Information Commissioner, and
- Seek leave for judicial review by the Supreme Court.



The 1-2-3 of submitting a PATI request

- Put it in writing (an email or letter is fine)
- Be specific and describe the records enough so that the Information Officer knows what you are looking for
- Say how you want to receive the information (electronic copies are free)



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.

WHAT WE DO

STRENGTHENING THE RIGHT

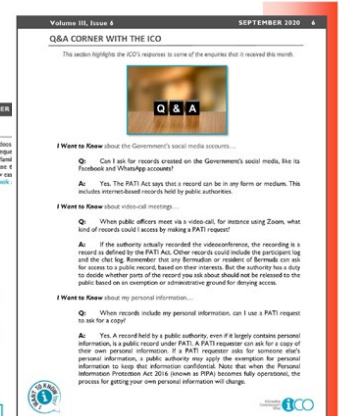
1 APRIL 2020 – 31 MARCH 2021

RAISING PUBLIC AWARENESS

Every time a PATI request is made, Bermudians and residents are ensuring that their voices are heard on issues that affect their lives, by ultimately holding public decision makers accountable for past, current and future public decisions. During 2020, the ICO's public awareness initiatives encouraged Bermudians and residents to recognise when and how to use their PATI rights, empowering them to be informed, included and involved when public decision-making impacts their lives.

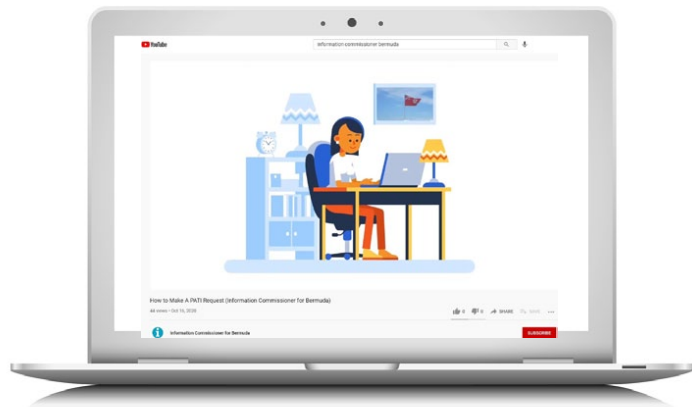
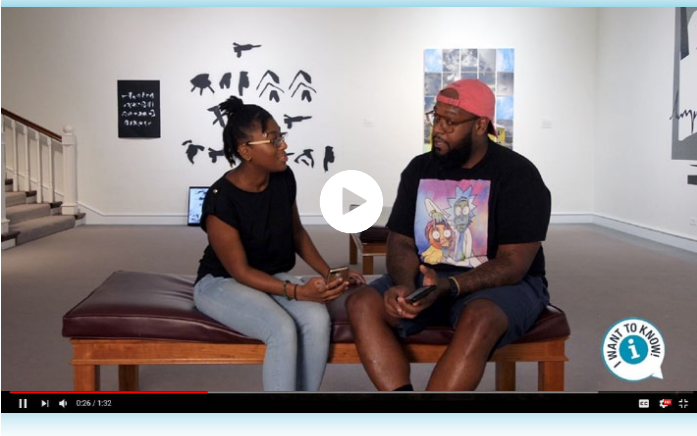
ICO MONTHLY ROUNDUPS

Eight Monthly Roundups were published on ico.bm and 512 individuals received email notices of publication. During 2020, the content of the Monthly Roundup expanded to include the *Learning More* series and the *ICO Investigator's Insight* articles. The ongoing *Learning More* series was started in the June edition to demonstrate how PATI rights relate to important community issues such as social justice, crime, financial recovery and employment, education, and the environment. The *Investigator's Insight* series debuted in the August Roundup. These articles offer readers a closer look at the principles guiding the Information Commissioner and her officers as they meet the Commissioner's mandate under the PATI Act. The ICO also introduced a *Tips Corner for Public Authorities and PATI Requesters* and a *Q&A Corner with the ICO* in the September Roundup. Developing value-added content in the Monthly Roundups contributes to more informed debates and engagement among all PATI stakeholders.



SUCCESSFUL 'I WANT TO KNOW!' VIDEO SERIES LAUNCHED

In October 2020, the ICO released four new public awareness videos about PATI rights. Three videos in the series highlight how families, business owners or anyone can use their PATI rights to request public information that is important to them. The fourth video demonstrates how easy it is for anyone who wants to make a PATI request to do so. The videos are available on the ICO's Facebook, Instagram, YouTube channel and website.



20K+ views

The videos in the series had 20K+ views on the ICO's Facebook, Instagram, YouTube channel and website.

ONLINE OUTREACH

As Bermuda responded and adjusted to social distancing and remote working environments, the ICO intentionally amplified its social media presence during 2020. The ICO maintained a more active Facebook page and ran sponsored content about press releases, Monthly Roundups, examples of PATI requests throughout the world, and Decisions from the Information Commissioner, among other topics. During the 2020/2021 budget year, the ICO had over 192,300 reaches and over 9,100 engagements with Facebook users.

The ICO's average website session duration was 0:52 minutes and the website had a larger percentage of returning visitors. In 2020, 77% of website users were new users (compared to 79% in 2019), and a larger portion, 23%, were returning users who continued to use the website as a resource.

ICO PROVIDES GIFT BAGS TO THE FAMILY CENTRE

The ICO was originally scheduled to host a booth at the 2020 Bermuda Agricultural Show. The ICO planned to use this opportunity to interact with a broad cross-section of the community and distribute youth-oriented ICO-branded giveaways. With the event cancelled, the ICO was left with a larger than expected supply of these promotional products. As the end of the year holiday season approached, **the ICO provided 50 gifts bags of youth-oriented promotional items to The Family Centre** to distribute to families in need and raise their awareness of their rights under the PATI Act.



*Dr. Sandy De Silva,
Executive Director
of Family Centre,
and Information
Commissioner
Gutierrez*

RIGHT TO KNOW WEEK 2020

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.

Locally, International Right to Know Week was observed while Bermuda was moving through the phases of reopening after the shelter-in-place. In response, the ICO continued some aspects of its prior Right to Know Week programme, and successfully tried new activities. Continuing what was started in 2019, Information Commissioner Gutierrez delivered her 2020 Right to Know Day Declaration at City Hall in Hamilton on Monday, 28 September.



Information Commissioner Gutierrez; The Rt. Wor. Charles R. Gosling, JP, Mayor of Hamilton; The City of Hamilton Town Crier, Mr. Ed Christopher; and the officers of the ICO

The Information Commissioner joined *The Daily Hour* on the Full 100 Radio online radio programme to discuss the importance of PATI rights in Bermuda. Information Commissioner Gutierrez answered questions live on the air from both the hosts and the wider listening community. Additionally, Bermuda Broadcasting Company interviewed the Commissioner to discuss the launch of the *I Want to Know* public awareness video series.



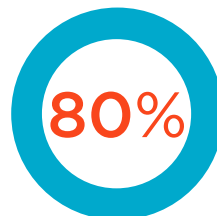
The Daily Hour Host Jamel Hardtman, Co-Host Carla Zuill and Information Commissioner Gutierrez

MONITORING PUBLIC AWARENESS

The ICO's annual public awareness survey helps measure the effectiveness of our public awareness initiatives year over year. The ICO has measured changes in public awareness of the PATI Act and the rights it creates since the 2015/2016 budget year. Since the initial survey was conducted in 2016, the ICO has continued to collect this data at the end of each fiscal year. Important 2020 highlights include:



Respondents who believe the right of access to public records is important to them



Respondents who believe that creating and enforcing the PATI Act is a very important public investment

PERCENTAGE OF RESPONDENTS WHO HAVE HEARD OF THE PATI ACT



PROVIDING GUIDANCE TO PUBLIC AUTHORITIES

This year, the ICO continued to host the Information Commissioner's Quarterly Briefings.

In line with public health guidelines, the Briefings shifted to virtual presentations. The adjustment allowed the ICO to continue providing this opportunity for public officers and others involved in PATI work to interact, as well as discuss and learn about recently published Information Commissioner's decisions, resolved cases, trends the ICO has observed and best practice recommendations. The 2020 topics were:

PATI & the new normal (remote work and public records)

Frivolous and vexatious requests, section 16(1)(e)

ICO 2020 Annual Return process

Operations of public authorities (section 30)



Participants from government departments, quangos, statutory boards and committees, and parish councils who attended the virtual Quarterly Briefings



Different public authorities represented

Positive feedback on the virtual Quarterly Briefings



Quarterly Briefing slides (including presenter's notes) are available on the ICO website, ico.bm.

ENFORCING THE RIGHT

1 JANUARY 2020 – 31 DECEMBER 2020

REVIEWS AND DECISIONS

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



VALIDATION

The ICO ensures that the application meets the requirements of the PATI Act and confirms what the applicant wants the Information Commissioner to review.



EARLY RESOLUTION

If appropriate, the ICO may suggest that the parties attempt early resolution.



INVESTIGATION

The ICO will gather relevant information and records, invite the parties to make submissions and evaluate what is received. Parties may attempt resolution, facilitated by the ICO, during the investigation stage.



DECISION

If the review is not resolved and withdrawn, the Information Commissioner will issue a legally binding Decision Notice and, if necessary, will take steps to enforce the decision and order on behalf of the public.

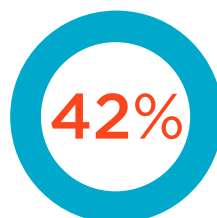


You can learn more about each of these stages in the *ICO Reviews Policy and Handbook*, available at [ico.bm](https://ico.org.uk/for-the-public/information-access/pati-reviews-policy-and-handbook).

THE INFORMATION COMMISSIONER'S 2020 REVIEWS



New applications for Information Commissioner's independent review



Decrease from applications received in 2019

THE INFORMATION COMMISSIONER'S TOTAL CASELOAD FOR 2020

On 1 January 2020, the ICO carried over 33 open reviews from previous years. This brought the ICO's total caseload in 2020 to 54 applications.

	2017	2018	2019	2020
CASELOAD				
Reviews brought forward from previous years	30	36	39	33
New applications	22	31	36	21
Total	52	67	75	54

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.

	2017	%	2018	%	2019	%	2020	%
PROPORTIONS OF NEW VALID APPLICATIONS								
Valid	18	82	21	75	34	94	19	90
Invalid	4	18	7	25	2	6	2	10
Total	22	100	28*	100	36	100	21	100

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

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 applicants challenged public authorities' reliance on the following exemptions in the internal review decisions.

	2017	2018	2019	2020
EXEMPTIONS CHALLENGED IN NEW CASES				
s.22 Health or safety	1	0	0	0
s.23 Personal information	4	2	1	1
s.25 Commercial information	9	1	2	0
s.26 Information received in confidence	4	3	5	2
s.27 Cabinet documents	0	2	0	0
s.28 Ministerial responsibility	0	1	1	1
s.29 Deliberations of public authorities	4	1	2	2
s.30 Operations of public authorities	3	0	1	1
s.31 Financial and economic interests	0	0	1	0
s.32 National security, defence and international relations	1	0	1	0
s.33 Governor's responsibilities	1	0	0	0
s.34 Law enforcement	3	4	1	2
s.35 Legal professional privilege	0	2	4	1
s.36 Parliamentary privilege	0	0	1	0
s.37 Disclosure prohibited by other legislation	3	2	2	2
s.38 Non-disclosure of existence of record	0	0	1	0
Total	33	18	23	12

A significant number of administrative denials were challenged in the new 2020 cases received by the Information Commissioner. Applicants also challenged public authorities' failure to respond to PATI requests and other procedural issues.

On a positive note, the significant decrease in the number of the Information Commissioner's reviews of public authorities' failure to issue internal review decisions could mean that PATI requesters were more likely to receive a substantive response to their request than in 2019.



	2017	2018	2019	2020
ADMINISTRATIVE DENIALS AND OTHER ISSUES CHALLENGED IN NEW CASES				
s.4 Inapplicability of PATI Act	0	2	5	2
Failure to decide	3	9	13	4
s.16 Administrative denial	9	4	4	11
Fees charged	0	0	0	0
Reasonableness of search	2	6	3	3
Other (e.g., manner of access given, insufficient assistance provided, etc.)	3	1	1	1
Total	17	22	26	21

APPLICATION OUTCOMES

Of 54 applications pending in 2020, the ICO closed 39% (or 21) of them. The Information Commissioner issued 17 decisions in 2020.

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.

	2017	2018	2019*	2020
REASON FOR CLOSURE IN EARLY STAGES				
Invalid	4	7	2	2
Early resolution	0	0	1	0
Abandoned/Withdrawn	0	3	1	0
Total	4	10	4	2

*The 2019 figure corrects under reporting in last year's Annual Report.

REVIEWS CLOSED DURING INVESTIGATION

Reviews do not always result in a decision by the Information Commissioner. If the parties engage in a facilitated resolution at the investigation stage and settle all of the issues, the Information Commissioner may accept an applicant's decision not to pursue the review further. In 2020, the Information Commissioner successfully closed two reviews by way of facilitated resolution.

	2017	2018	2019	2020
REASON FOR CLOSURE DURING INVESTIGATION				
Resolved	3	5	3	2
Abandoned/Withdrawn (other)	3	0	0	0
Total	6	5	3	2

INFORMATION COMMISSIONER'S 2020 DECISIONS

Of the 17 decisions issued, the Information Commissioner decided 4 of them for the applicant.

The remaining 13 decisions by the Information Commissioner upheld the public authority's decision in whole or in part.

	2017	2018	2019	2020
DECISION OUTCOMES				
For applicant	2	10	24	4
For public authority	2	0	6	8
Partially upheld	1	3	5	5
Total	5	13	35	17

JUDICIAL REVIEWS

In June 2020, the Bermuda Hospitals Board (BHB) and Information Commissioner agreed to discontinue the BHB's judicial review of Decision Notice 24/2019, Bermuda Hospitals Board. BHB agreed to disclose the total costs range of its Executive Team member posts in bands of \$10,000.

“Disclosure of the costs of posts paid for with public money furthers the accountability and transparency purposes of the PATI Act. Bermudians and residents have the right to know how their money is being spent and whether it is spent efficiently, effectively and appropriately. As we move forward, public authorities should expect heightened public scrutiny of records involving public money, especially during this period of economic hardship.”

Information Commissioner Gutierrez, June 2020

In January 2021, the Supreme Court granted leave for a judicial review by the Attorney-General to challenge to two summonses issued by the Information Commissioner in a pending review involving the Ministry of Health Headquarters, 2020 No. 496 Civ., Attorney-General v. Information Commissioner. The Ministry of Health maintained that when a public authority determines that the PATI Act is not applicable to a record due to section 4(1) of the PATI Act, the Information Commissioner cannot examine the record to conduct an independent review.

Section 4 of the PATI Act defines the Act's applicability. Section 4(1) states that the PATI Act does not apply to records that were created or obtained by the identified public authorities when exercising their functions. Section 4(2) creates an exception to this exclusion, applying the PATI Act to the administrative records of those public authorities.

2020 DECISION HIGHLIGHTS

Although the Information Commissioner issued fewer decisions in 2020, these decisions addressed a number of aspects concerning the rights the PATI Act provides.

CLARIFYING AND SAFEGUARDING THE SCOPE OF THE PATI ACT – SECTION 4

Section 4 is not only the subject of the judicial review in the case above. In Decision 05/2020, Human Rights Commission (HRC), the Information Commissioner also clarified how public authorities should respond to PATI requesters when the public authority decides that a record falls outside the scope of the PATI Act due to section 4. In Decision 05/2020, the Information Commissioner considered a refusal by the HRC for the minutes of the meetings of the HRC Commissioners. After reviewing the records privately, the Information Commissioner upheld the HRC's decision, accepting the HRC's reason that the records were created while performing its functions under section 14 of the Human Rights Acts 1981.

Decision 05/2020 illustrates the importance of an independent review to provide the public with assurances that section 4 has been properly invoked. The Information Commissioner also emphasised that for most of the public authorities listed in section 4, the authorities' functions are subject to public accountability by other means, such as judicial review, which preserves their independence and avoids external influence over the exercise of their functions.

THE SIGNIFICANCE OF KNOWING WHETHER A RECORD EXISTS

During many of the Information Commissioner's reviews, a public authority is required to clarify whether a record responsive to a request exists. This may be because the public authority did not conduct a reasonable search to locate the responsive records and, instead, prematurely informed the PATI requester that the records were exempt from public disclosure without knowing if any records existed in the first place.

In Decisions 11/2020, 12/2020 and 13/2020 involving the the Department of Education (Department), a former public school teacher made a series of PATI requests seeking records about an incident at a school; the Department's policy, protocol or procedures for handling school incidents; and copies of the former school teacher's emails. As a result of the reviews, the Department clarified that it actually did not hold records at the school-level about the incident, and explained when an incident would (and would not) initiate reporting at the Department level. The Department also explained its general, unwritten practices at the time for handling incidents, and shared its current code of practice. The PATI requester also learned how the Department retains and disposed of emails in the absence of a written retention and destruction policy.

For PATI requesters, it is important to have a clear, accurate understanding of what records the public authority actually holds, even when the records cannot be disclosed. It may be disappointing to a PATI requester to learn that a public authority does not keep meeting minutes or does not have a written policy on a certain topic. But this information can still be valuable to calm a PATI requester's speculations or, in some cases, to encourage a public authority to consider creating additional records.

Finally, the PATI Act acknowledges that instances may arise when a public authority may not be required to acknowledge whether a record exists. In Decisions 08/2020 and 10/2020, involving the Bermuda Monetary Authority (BMA), the Information Commissioner considered when section 38 of the PATI Act allows a public authority to refuse to confirm or deny the existence of a record. Section 38 of the PATI Act has two requirements. First, if the record exists or were to exist, its content is or would be exempt from public disclosure under any other exemption in the PATI Act. Second, the balance of the public interests must support refusing to disclose whether or not the record exists. Although in Decision 10/2020 the BMA was not required to disclose the existence or nonexistence of a contract with a specific vendor, the BMA was required

in Decision 08/2020 to disclose the existence or nonexistence of records related to a staff recruitment plan. Simply clarifying whether records exist can assist a PATI requester in understanding how a public authority operates and provide helpful reasons to close the gap between the public's expectations about the records held by a public authority and what the public authority actually holds.

LEARNING MORE ABOUT THE MANAGEMENT OF PUBLIC CONTRACTS

Bermudians and residents have the right to ask for records about public authorities' procurement and spending. Sometimes this involves learning how much was spent on a particular contract for goods or services. The PATI Act requires public authorities to automatically publish the non-exempt details of all contracts with a total value of \$50,000 or more (read more about this at page 29). Through a PATI request, Bermudians and residents can also learn more about how a public contract is managed. This may include being informed of the outcome (or lack of results) for the publicly-funded project. For example, in Decision 06/2020, the Information Commissioner found that the Regulatory Authority was correct in denying access under section 25(1)(d) of the PATI Act to the details of Deloitte's rates to conduct the Regulatory Authority's 2015 Market Review, because disclosure could prejudice Deloitte's future contract negotiations. But the public had a right to know the remaining details about the contract for the 2015 Market Review, which was never completed. A public authority may only deny access to such records when it demonstrates that the denial is legitimate under the PATI Act. Even then, in some cases, the public interest may still require disclosure to a PATI requester.

THE ROLE OF EXEMPTIONS IN PUBLIC ACCESS TO INFORMATION REGIMES

Thirteen out of seventeen (76%) of the Information Commissioner's decisions in 2020 upheld, in whole or in part, the decision of public authorities. Eight of these decisions found that the public authority was correct to rely on exemptions to deny access to the records requested under the PATI Act.

Denial of records may not be a result hoped for by a PATI requester. But exemptions are inseparable from a public access to information regime. Exemptions support the public's right by preventing public authorities from arbitrarily denying access to public records. Exemptions in the PATI Act mean that public authorities can only justify a denial of public access when certain rules are met.

One purpose of the PATI Act is to give the public the right to access information held by public authorities to the greatest extent possible. But this right is not absolute. The PATI Act recognises that public disclosure of certain records might undermine, rather than improve, public decision making and delivery of services. This can occur when disclosure could prejudice national security or the effectiveness of a public authority's investigation, or might contradict certain constitutional principles, such as parliamentary privilege. The Information Commissioner's Decision 15/2020, Bermuda Police Service (BPS) and Decision 17/2020, Office of the Clerk of the Legislature (Legislature) best illustrate this point.

In Decision 15/2020, the Information Commissioner concluded the BPS was correct to refuse access to some records relating to the applicant, who was a police officer under a disciplinary investigation. This was because disclosure would prejudice the effectiveness of the procedures the BPS uses to conduct its disciplinary investigations. In Decision 17/2020, the applicant sought records related to the work of the Parliamentary Joint Select Committee 'Examining the Events of the 2 December 2016 Incident at the House of Assembly'. The Information Commissioner agreed with the Legislature that disclosure would infringe on parliamentary privilege, a long-established constitutional principle that, among other things, allows Parliament itself to decide what information about its proceedings should be published. In Decision 17/2020, the Information Commissioner highlighted that sometimes when an exemption applies, the sought-after information may still be available to the public through other means. The Information Commissioner noted that Parliament had published its 146-page report, with annexes that include witness statements and other primary source records.

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. Contact us at info@ico.bm to receive these email notifications.

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 requester's identifying information)

Have quarterly expenditures readily available for the public

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 also submit their annual PATI statistics to the Information Commissioner for inclusion in her annual report.

2020 ICO ANNUAL RETURN

The ICO Annual Return enables the Information Commissioner to determine the status of a public authority's compliance with the requirements of the PATI Act listed above. The ICO identifies the public authorities that are still working to bring themselves into compliance with the Act by, for example, preparing an Information Statement or gazetting its qualifying contracts. In these cases, the ICO agrees with these public authorities on a reasonable timeframe to bring the authority into compliance, and provides appropriate guidance throughout, if requested. If noncompliance persists, the Information Commissioner will use her statutory authority to enforce compliance.

The Information Commissioner is pleased to report that nearly all public authorities submitted their 2020 ICO Annual Return, although there was a slight increase in those that did not, as compared to 2019.



Read the new ICO Guidance on the Annual Return (Part 2 and section 58(3)) at [ico.org.uk](https://ico.org.uk/for-organisations/annual-return).

2019			2020	
ICO ANNUAL RETURN				
	Number of Public Authorities	Percentage of Total Number	Number of Public Authorities	Percentage of Total Number
Timely submissions	83	41	114	56.4
Late submissions	109	54	68	33.7
Failed to submit	4	2	7	3.5
Under review	7	3	13	6.4
Total	203	100	202	100

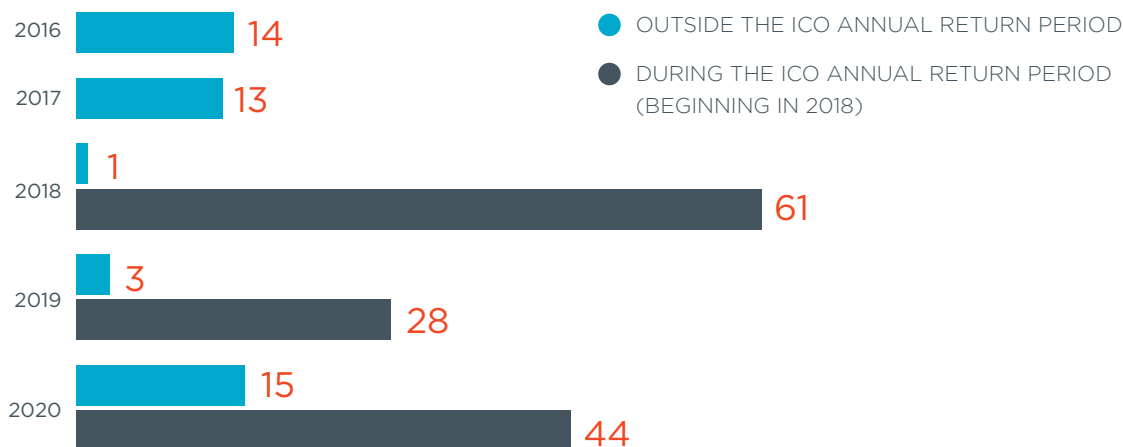
Noncompliance with the requirement in section 58(3) to report PATI statistics is addressed in the following section.

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 the status of public authorities' compliance with this requirement. It also serves as a helpful yearly reminder for authorities to provide this important spending information to the public.

The ICO Annual Return process commenced in November 2020 and ended in February 2021. During this period, 44 gazette notices detailing the contracts with a total value of \$50,000 or more were issued by 39 public authorities. In comparison, only 15 gazette notices were issued outside the ICO Annual Return process between 1 April 2020 and 31 October 2020.

NUMBER OF OFFICIAL GAZETTE NOTICES PUBLISHING CONTRACT DETAILS



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. A number of public authorities have highlighted these efforts in their ICO 2020 Annual Return. The Information Commissioner commends the officers, employees, trustees and members of the following public authorities for expanding and prioritising access to information.



FINANCE, BUSINESS & ECONOMY

Bermuda Economic Development Corporation

– Published 2020 data and statistics about COVID-19 funding and support to businesses.

Financial Intelligence Agency | Publishes on its website its consultation papers, statistics, all relevant legislation, information bulletins, policies and procedures, audited financial statements, annual reports, case studies and typologies.

Bermuda Monetary Authority | Regularly publishes an annual report, a quarterly insurance-linked securities Market Report, its annual business plan, a quarterly Banking Digest, an Insurance Digest and a Regulatory Update. Also regularly publishes discussion papers and consultation papers, for review and comment by the public, and provides a variety of statistics and information on its website.

Bermuda Land Development Company Limited
Published information to update the public about the St. George's Water Project.

Department of Financial Assistance | Tables its Annual Report in the House of Assembly on a yearly basis to inform the public about general operational activities during the fiscal period.

Regulatory Authority | Publishes its quarterly financials on its website for public inspection.



TRANSPORT

Bermuda Airport Authority | Publishes an annual report on its website.

Department of Public Transportation | Bus cancellations and cashier kiosk early closures published on its website and emailed to those subscribed for bus alerts. It issues press releases for temporary route changes for roadworks or special events, and cashier kiosk early closures. It has released videos on how to ride the bus and how to use Central Terminal after the onset of COVID-19.

Ministry of Transport | Issues Ministerial statements, budget statements, press statements and press releases on bus and ferry services, and seasonal cruise ship activity (pre- and post-season), including 'economic impact' details that are based on the number of ship calls and number of passengers.



GOOD GOVERNANCE

Bermuda Public Accountability Board | Publishes information on its website.

Human Rights Commission | Publishes its Annual Report, which details yearly events, statistics, issues and legislative developments. Its website houses the Annual Report, PATI statement and related documentation and updates reflecting Commission developments and those across the broader human rights landscape. Also uses media outlets and social media platforms to promote developments as well as knowledge exchange and education in support of its work, and social justice efforts.

Information Commissioner's Office | Publishes videos explaining the use of the PATI Act and how to make a PATI request; decisions; press releases; audited financial statement; annual reports; monthly roundup; and speaker's notes from the Information Commissioner's Quarterly Briefings.

Office of the Clerk of the Legislature | Publishes on its website, a listing of all Parliamentary Committee meeting dates and times, whether these may be public hearings or in camera meetings. Also publishes the Order Papers for all meetings of the House of Assembly and the Senate, and provides live streaming of proceedings in both the House and the Senate.

Office of the Auditor General | Publishes on its website a listing of all clients, with the last accounts audited for each entity and the audits currently in progress. Also publishes its annual reports.

Office of the Ombudsman | Publishes on its website its annual reports, archived news, financials and systemic investigations reports.

Office of the Privacy Commissioner for Bermuda
Publishes a dedicated PATI page on its website, containing its information statement, to be updated with links to or duplications of Gazette notices as well as publications or PATI requests and responses (with the requester redacted).



PUBLIC SAFETY

Bermuda Police Service | Publishes its policies on its website.

Police Complaints Authority | Published its statistics on its website.

Royal Bermuda Regiment | Issues regular press releases about the Coast Guard, Biannual Recruit Camps, COVID-19 operations, promotions, recruiting efforts, as well as publication through regular updates of information posted on its website and social media platforms.



HEALTH

Bermuda Health Council | Publishes numerous items on its website, including Behind the Scenes (which provides a high level summary of achievements, meetings and other information about the Health Council's work); health system trends reports; annual publications such as the National Health Accounts Report and Actuarial Report, and ad hoc reports such as the 2017 Analysis of Health Insurance Claims for Road Traffic Crashes. It also provides Fact Sheets, which are quick and simplified information about health system updates (such as changes in the Standard Premium Rate or details about what the Standard Premium Rate is) or brief research summaries on potential system changes such as Data Briefs (summaries of data requests and analysis) and Data Tables. It publishes Health Professional Registers, a Health Facility Register and Employers Compliance information, including a list of noncompliant employers. Governance Documents, Board and Secretariat Information, the Bermuda Health Plan Consultations, and a Telehealth Guide are also on its website.

Bermuda Hospitals Board | Publishes executive salary information, quarterly quality and patient safety data (which includes sentinel events, infection rates, readmission rates, fall and pressure ulcers), patient satisfaction in year-by-year summary and monthly road traffic accident statistics. During COVID-19, BHB continually shared details of service changes and information about hospital staff outbreaks, patient outbreaks, testing and more.

Department of Health | Publishes seawater quality test results, a database of registered day care providers and licensed day care centres, and grades on food establishment licenses.



COURTS & TRIBUNALS

Judicial Department | Publishes an annual report outlining the services offered by the Judiciary, the current state of each of the Court's divisions and detailing the statistics for the previous year. The annual reports from 2014 to date are available on its website, along with the considered judgments of the Supreme Court and Court of Appeal, as well as all practice directions.

Immigration Appeals Tribunal | Publishes its rulings, when they become available, on the government's website.



COMMUNITY & ENVIRONMENT

Stamp Design Advisory Committee | Uses its website and Government media releases to publish any additions or changes to products.

Bermuda Sports Anti-Doping Authority | Publishes ads in local media on compliance and online media. Also tables an annual report.

Department of Youth, Sport and Recreation | Publishes press releases when awarding sponsorships to individuals and groups.

Department of Environment and Natural Resources | Publishes its Quarterly Envirotalk, which covers major interest stories within the Department's mandate and a quarterly newsletter to the commercial fishermen. It also hosts a website.

Registry General | Publishes a copy of all Temporary Fundraising Licences and Marriage Officer Licences issued. Every month, it also publishes the list of all registered charities.

Corporation of Hamilton | Publishes on its website its annual financial statements, annual budget reports, and minutes and agendas for all Board and committee meetings.

Bermuda Post Office | Informs the public about legislative changes to rates and services, and closing times outside of normal operating hours. It published any other additions or changes to services on its website and through Government's media releases.

Department of ICT Policy and Innovation | Published the IT Career Guide and Digital Citizenship Conference magazine in electronic format as the primary distribution method, thus reducing printing costs.

Department of Statistics | Regularly makes publications available, including the monthly Consumer Price Index and Retail Sales Index; quarterly gross domestic product (GDP); and annual GDP, Tourism Satellite Accounts, Information and Communication Technology, Environmental Statistics Compendium, the Digest of Statistics, Employment Brief, Facts & Figures. It also publishes a Labour Force Survey every six months and a Population and Housing Census when requested.

Land Valuation Department | Published a PATI Guidance Note brochure and other brochures to inform the public of its processes.

2020 INFORMATION COMMISSIONER'S AWARD FOR OUTSTANDING INFORMATION OFFICERS

This was the second year for the Information Commissioner's Award for Information Officers, which is presented annually 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.

Two Information Officers received the 2020 Information Commissioner's Award: Mr. James Needham, of the Land Valuation Department, and Mrs. Debra Goins-Francis, of the Bermuda Hospitals Board.



PHOTO CREDIT: JASON SWAN, DEPT. OF COMMUNICATIONS

Information Commissioner Gutierrez and 2020 Awardee Mr. James Needham, Information Officer for the Land Valuation Department; and Mrs. Diane Elliott, Director of Land Valuation Department



PHOTO CREDIT: JASON SWAN, DEPT. OF COMMUNICATIONS

Information Commissioner Gutierrez and 2020 Awardee Mrs. Debra Goins-Francis, Information Officer for the Bermuda Hospitals Board (BHB); and Dr. Michael Richmond, Chief Executive Officer for BHB

“A committed and supported Information Officer can be the catalyst for tremendous positive influence on the culture within their public authority. In addition to working well with PATI requesters, this year’s award recipients are also change leaders who are effectively guiding their public authorities through the process of becoming more open and accountable to the public. We commend their courage and contributions to good governance and public access to information in Bermuda.”

Information Commissioner Gutierrez, October 2020

2020 PUBLIC AUTHORITIES' STATISTICS

1 JANUARY 2020 – 31 DECEMBER 2020

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 ICO Annual Return includes a reporting form for public authorities to record and submit their PATI statistics to the Information Commissioner.

2020 PUBLIC AUTHORITIES' STATISTICS		
	Number of Public Authorities	Percentage of Total Number
Received PATI requests	34	17
Did not receive any PATI requests	149	74
No statistical information provided	6*	3
Under review	13	6
Total	202	100

**The ICO included PATI request statistics above that came to its attention from a public authority that did not submit an ICO Annual Return.*

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.

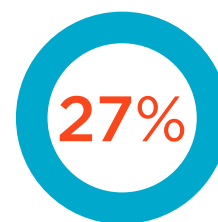
After unsuccessful efforts to encourage compliance with section 58(3), the Information Commissioner notified the public authorities below that they would be listed in the 2020 Information Commissioner's Annual Report as noncompliant with section 58(3) of the PATI Act and the submission of a 2020 ICO Annual Return:

Berkeley Institute Board of Governors
Criminal Injuries Compensation Board
Department of Corrections
Hamilton Parish Council

Ministry of Labour Headquarters
Ministry of Social Development & Seniors Headquarters
Whitney Institute Board of Trustees

2020 PATI REQUESTS

Individuals made 116 new PATI requests for access to records under section 13 of the PATI Act. Another 8 PATI requests for records were reported as pending at the end of 2019 and were carried over to 2020. The public authorities with the highest number of new 2020 requests reported to the ICO were the Bermuda Police Service (51 requests) and the Bermuda Hospitals Board (9 requests). The Ministry with the highest number of reported requests for only government departments was the Ministry for Legal Affairs & Constitutional Reform, with 11 requests received by its various departments.



Increase in PATI requests in 2020 as compared to 2019

	2017	2018	2019	2020
TOTAL PATI REQUESTS				
Reported new requests	143	133	91	116
Reported requests carried over from prior year	10	10	9	8
Total requests in processing for year	153	143	100	124

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

	2017	2018	2019	2020
INITIAL DISPOSITION OF PATI REQUESTS (AS AT YEAR END)				
Pending	10	6	8	10
Access granted in whole	56	59	31	31
Access granted in part	15	22	22	29
Access refused in whole	54	49	27	39
Unknown	18	7	12	15

In 2020, public authorities reported receiving 0 new requests to amend a record of personal information under section 19 of the PATI Act.

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 2020 the most commonly invoked exemptions were for personal information (section 23) and operations of public authorities (section 30). The most frequently cited administrative ground for refusal was because the records did not exist or could not be found (section 16(1)(a)).

		2017	2018	2019	2020
REASONS FOR REFUSAL IN INITIAL DECISION					
s.4	Record not within scope of PATI Act	0	2	6	0
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	20	30	11	15
s.16(1)(b)	Administrative refusal because insufficient information in request	7	4	0	6
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	4	2	2	3
s.16(1)(d)	Administrative refusal because publication of information is required by law within 3 months	0	0	1	0
s.16(1)(e)	Administrative refusal for vexatious request	0	2	0	3
s.16(1)(f)	Administrative refusal because information is already in public domain	4	2	6	7
s.16(1)(g)	Administrative refusal because fee payable under section 20 not paid	0	2	3	0
s.22	Health and safety	0	0	0	1
s.23	Personal information	13	9	9	13
s.25	Commercial information	7	11	4	3
s.26	Information received in confidence	3	3	6	6
s.26A	International tax agreements	0	0	0	1
s.27	Cabinet documents	1	2	0	0
s.28	Ministerial responsibility	0	0	0	2
s.29	Deliberations of public authorities	4	2	0	4
s.30	Operations of public authorities	1	3	6	11
s.31	Financial and economic interests	0	1	0	0
s.32	National security, defence and international relations	1	0	1	0
s.33	Governor's responsibilities	1	1	0	0
s.34	Law enforcement	5	4	5	6
s.35	Legal professional privilege	2	5	3	4
s.36	Contempt of court and parliamentary privilege	0	0	2	0
s.37	Disclosure prohibited by other legislation	10	9	2	5
s.38	Non-disclosure of existence of a record	0	1	3	3
	Failure to decide	1	1	3	6

Public authorities also reported that individuals sought internal reviews 21 times in 2020. The majority of the internal review decisions denied access to the records, as shown below.

	2017	2018	2019	2020
DISPOSITIONS OF INTERNAL REVIEWS				
Pending	3	3	3	0
Grant access in whole	1	1	1	2
Grant access in part	1	1	5	12
Refuse in whole*	9	12	6	6
Procedural issues**	0	0	2	0
Referred to Commissioner	11	0	0	1
Total reported internal review decisions	25	17	17	21

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

**Includes issues such as a transfer to another authority.

The reasons invoked by public authorities in 2020 to refuse PATI requests at the internal review stage are captured in the following table:

		2017	2018	2019	2020
REASON FOR REFUSAL IN INTERNAL REVIEW DECISION					
s.4	Records not within scope of PATI Act	0	1	4	0
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	2	1	2	5
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	0	0	0	2
s.16(1)(d)	Administrative refusal because publication of information is required by law within 3 months	0	0	0	0
s.16(1)(e)	Administrative refusal for vexatious request	1	1	0	0
s.16(1)(f)	Administrative refusal because information is already in public domain	0	0	3	1
s.23	Personal information	4	1	2	1
s.25	Commercial information	5	1	1	0
s.26	Information received in confidence	3	1	4	1
s.27	Cabinet documents	0	1	1	0
s.28	Ministerial responsibility	1	1	0	1
s.29	Deliberations of public authorities	2	1	0	2
s.30	Operations of public authorities	2	0	1	1
s.32	National security, defence and international relations	1	0	0	0
s.33	Governor's responsibilities	1	1	0	0
s.34	Law enforcement	1	4	1	2
s.35	Legal professional privilege	0	2	2	2
s.36	Contempt of court and parliamentary privilege	0	0	1	0
s.37	Disclosure prohibited by other legislation	0	0	0	1
s.38	Non-disclosure of existence of a record	0	0	1	0
	Failure to decide	1	0	0	0
	Request for internal review out of time	0	0	0	0

IMPROVING ACCESS TO INFORMATION

IMPROVING ACCESS

In March 2021, the Information Commissioner completed her *Report and Recommendations on the Implementation of the PATI Act (PATI Report and Recommendations)*. In passing the PATI Act into law, Parliament understood that it would represent a significant culture shift for Bermuda, particularly within public authorities themselves. This understanding is reflected in the inclusion, at section 57, of a requirement for the Information Commissioner to investigate and issue a report on the operation of the PATI Act — essentially taking stock of how well the PATI Act has served the people of Bermuda.

The 2021 *PATI Report and Recommendations* reflects approximately three years of evaluation. It draws upon the Information Commissioner's observations of six years of the PATI Act's implementation, including handling 160 applications for her independent review and monitoring the PATI practices of over 200 public authorities annually. The Information Commissioner also commissioned assessments by two highly-respected, independent international organisations with extensive experience and expertise in conducting analyses and assessments of the legislation as written and as implemented: the Canadian-based Centre for Law and Democracy and the US-based Carter Center's Rule of Law Programme.

The Information Commissioner's *PATI Report and Recommendations* represents the culmination of this review, and has been submitted to the Government and appended to this Annual Report as required by section 57 of the PATI Act.

In her *PATI Report and Recommendations*, the Information Commissioner offers seven recommendations:

1. Public consultation for changes to the PATI Act and Regulations affecting public rights

PATI rights impact the relationship between the Government and the public. The Government should conduct a review of the Information Commissioner's recommendations for improvements to the PATI Act and PATI Regulations, considering and commenting on each recommendation, and release the results publicly as the basis for further consultation with the public, all public authorities and the Information Commissioner. The PATI Act should be amended based on the results of those consultations and public engagement.

2. Simplify the PATI request process and enable anonymous requests

The PATI Act and Regulations should immediately be amended to remove the requirement for applicants to provide anything other than an email address or mailing address as contact information.

3. Exclude generic statutory confidentiality provisions as the basis for exempting records from public disclosure

The Government should conduct a review of all Bermuda statutes, as promised by the Legislature when the PATI Act was being debated, to ensure that PATI rights are impaired by other statutes to the minimum extent. The Information Commissioner should be consulted during that review, and the results should be made public. Restrictions on access to information in other statutes should be removed where existing PATI exemptions provide adequate protection. If such a review is not feasible, public consultation should be held on an amendment to section 37 of the PATI Act to limit its application to prohibitions on the disclosure of specific records and to exclude generic confidentiality clauses for employees.

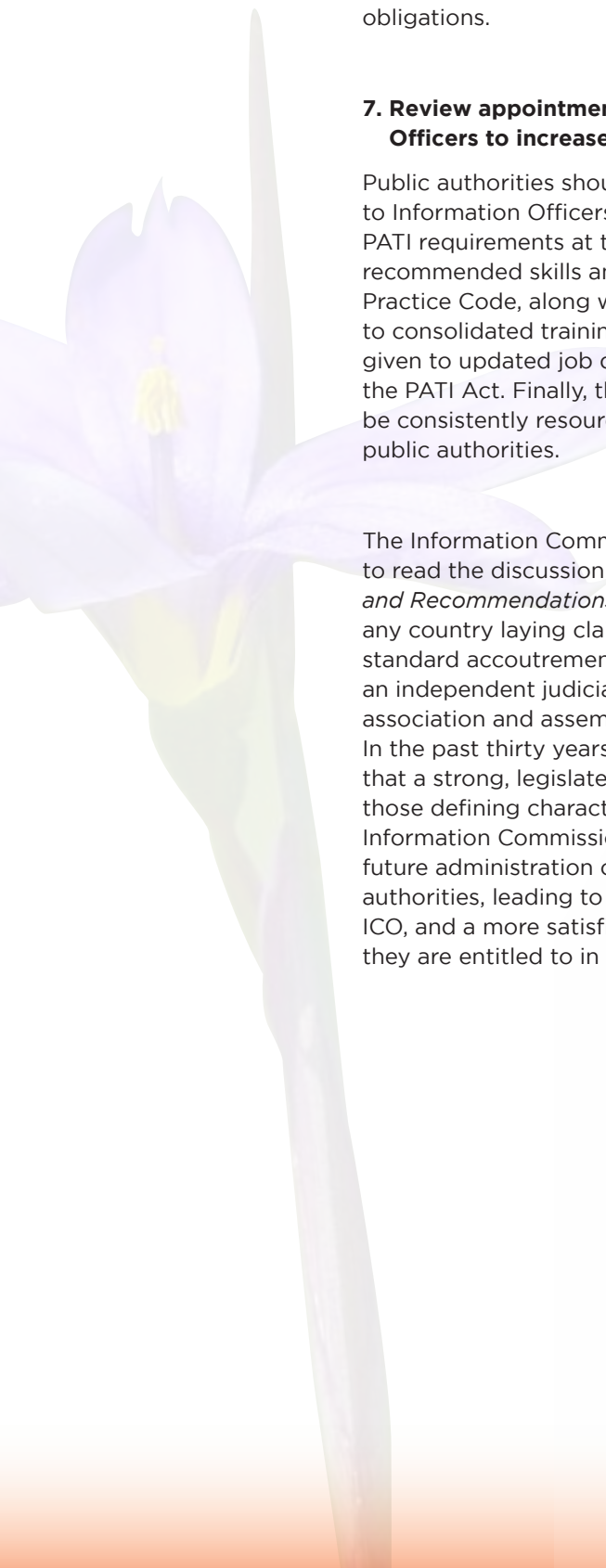
4. Increased engagement of leadership from heads of public authorities

Leadership from heads of public authorities is required to promote cultural change in public service and improve infrastructural support for improved PATI practices. Heads of authorities should ensure that:

- principles of openness are included in strategic plans;
- the PATI Administrative Code of Practice is endorsed and adhered to;
- specific policies and procedures are adopted to meet PATI requirements;
- an Information Officer with appropriate skills is appointed; and
- sufficient training and resources are provided to the Information Officers and other employees to fulfill PATI duties.

5. Improve public sector records management

The Minister should develop the Records Management Code of Practice at the earliest opportunity to facilitate ready access to public records, as required by section 60(2) of the PATI Act and consistent with the Government Reform Initiatives. Leadership within public authorities should prioritise records management, including ensuring that their public authority adopts appropriate formal guidelines and standard procedures for records management.



6. Provide resources and frameworks specifically to support statutory boards, committees and other bodies

The Government should develop specific resources and frameworks for supporting statutory boards and committees in meeting their PATI obligations.

7. Review appointment of, and support provided to, Information Officers to increase efficiency and effectiveness

Public authorities should review the appointment of and support given to Information Officers to enable efficient and effective handling of PATI requirements at the outset. This should include adhering to the recommended skills and experience for Information Officers in the PATI Practice Code, along with consideration of sharing Information Officers to consolidated training and support resources. Consideration should be given to updated job descriptions to include the statutory duties under the PATI Act. Finally, the PIPA/PATI Unit within the Cabinet Office should be consistently resourced to provide ongoing training and support to public authorities.

The Information Commissioner urges the Government and all stakeholders to read the discussion of these recommendations in her *PATI Report and Recommendations*. It is widely accepted in the 21st century that any country laying claim to the mantle of democracy must have the standard accoutrements of that status, such as free and fair elections, an independent judiciary, freedom of the press, freedom of speech, association and assembly and protections for fundamental human rights. In the past thirty years, a broad international consensus has also emerged that a strong, legislated public right of access to information is one of those defining characteristics of any truly democratic country. If the Information Commissioner's recommendations are followed, she believes future administration of the PATI Act will be less burdensome to public authorities, leading to fewer complaints and review applications to the ICO, and a more satisfied public who will receive access to the information they are entitled to in a timelier manner.

STRENGTHENING THE ORGANISATION

Although 2020 presented challenges to the organisation, the ICO embraced the opportunity for change and adaption as a small, nimble regulator. As a result, our infrastructure and systems are stronger. We have also continued to benefit from professional relationships with our overseas colleagues.

TRAINING AND STAFF DEVELOPMENT

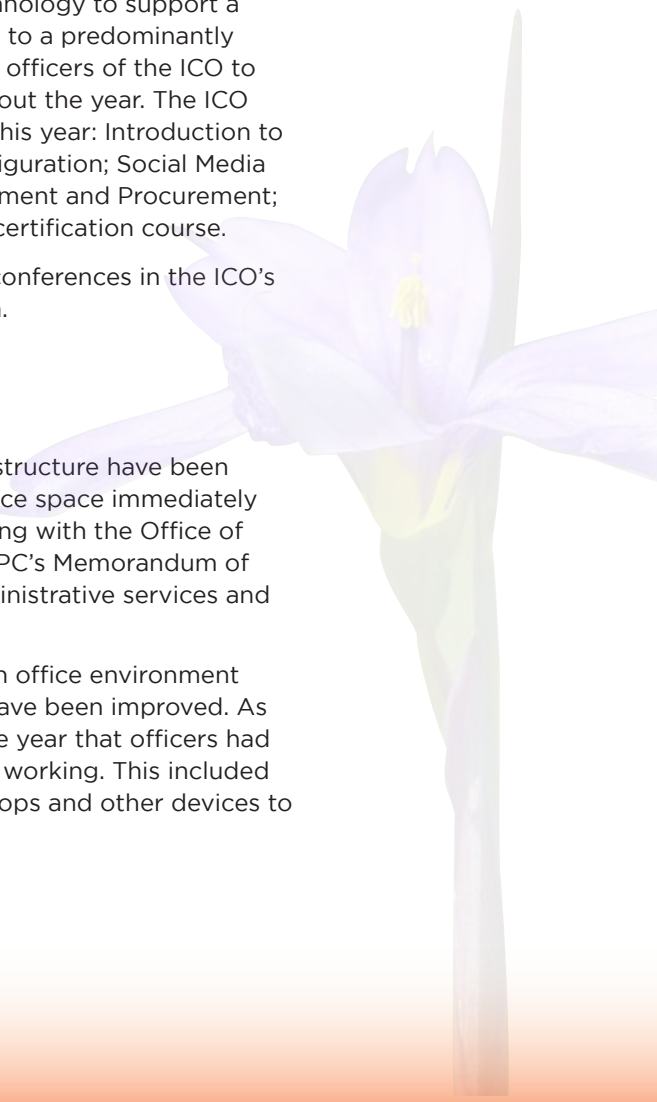
Due to its austerity budget, the ICO invested fewer financial resources into training this year. The ICO sought more creative options, such as a Coursera online course, and also focused on training offerings from other public authorities, such as the Office of the Privacy Commissioner and the Office of Project Management and Procurement. The entire ICO benefitted from on-the-job training with technology to support a remote work environment and complete our shift to a predominantly paperless office. These opportunities allowed the officers of the ICO to continue their professional development throughout the year. The ICO officers received the following specific trainings this year: Introduction to PIPA; Public-Private Partnership Contract Reconfiguration; Social Media Advertising; Code of Practice for Project Management and Procurement; and Privacy Officer Foundation and Practitioner certification course.

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

POLICIES AND INFRASTRUCTURE

Throughout this year, the ICO's policies and infrastructure have been improved. The ICO completed a move to new office space immediately before the March 2020 shelter-in-place, co-locating with the Office of the Privacy Commissioner (OPC). The ICO and OPC's Memorandum of Understanding has facilitated further shared administrative services and promoted efficiencies.

As the ICO returned to a hybrid remote/in-person office environment in mid-2020, the IT systems and physical office have been improved. As an employer, the ICO also ensured throughout the year that officers had the necessary resources and support to continue working. This included clarity on remote working policies, adequate laptops and other devices to



facilitate work from home, and flexible work hours to accommodate the dual responsibilities of work and family life during the pandemic.

INTERNATIONAL RELATIONSHIPS

The International Conference of Information Commissioners (ICIC) was established in 2019 in Johannesburg, South Africa and is the only international body of Information Commissioners. Information Commissioner Gutierrez has served on the 16-member Governance Working Group for the ICIC since March 2019. The ICIC is an important international resource for strengthening Information Commissioners' role in promoting public access to information. The ICIC issued a statement in April 2020, *Access to information in the context of a global pandemic*, which the ICO signed. The ICO also issued a local media statement to bring these issues to the attention of local public authorities. In December 2020, the ICIC signed a Memorandum of Understanding with UNESCO to confirm their mutual commitment to strengthening global awareness and the promotion of the universal right of access to information. More information is available on the ICIC website, informationcommissioners.org.



VISION OF THE ICIC

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.

FINANCES

The ICO proactively publishes details of its financial decisions and public expenditures. Its original budget estimate for the fiscal year ending 31 March 2021 was \$1,061,493. As a result of COVID-19 austerity measures, the ICO committed to costs savings of \$184,815 from the original budget estimate, inclusive of reductions in salaries and expenditures. For information about the ICO's budget, salary scales, contracts and audited financial statements, please visit ico.bm.

If you want to know additional information, just ask! You may email the ICO at info@ico.bm.

LOOKING AHEAD

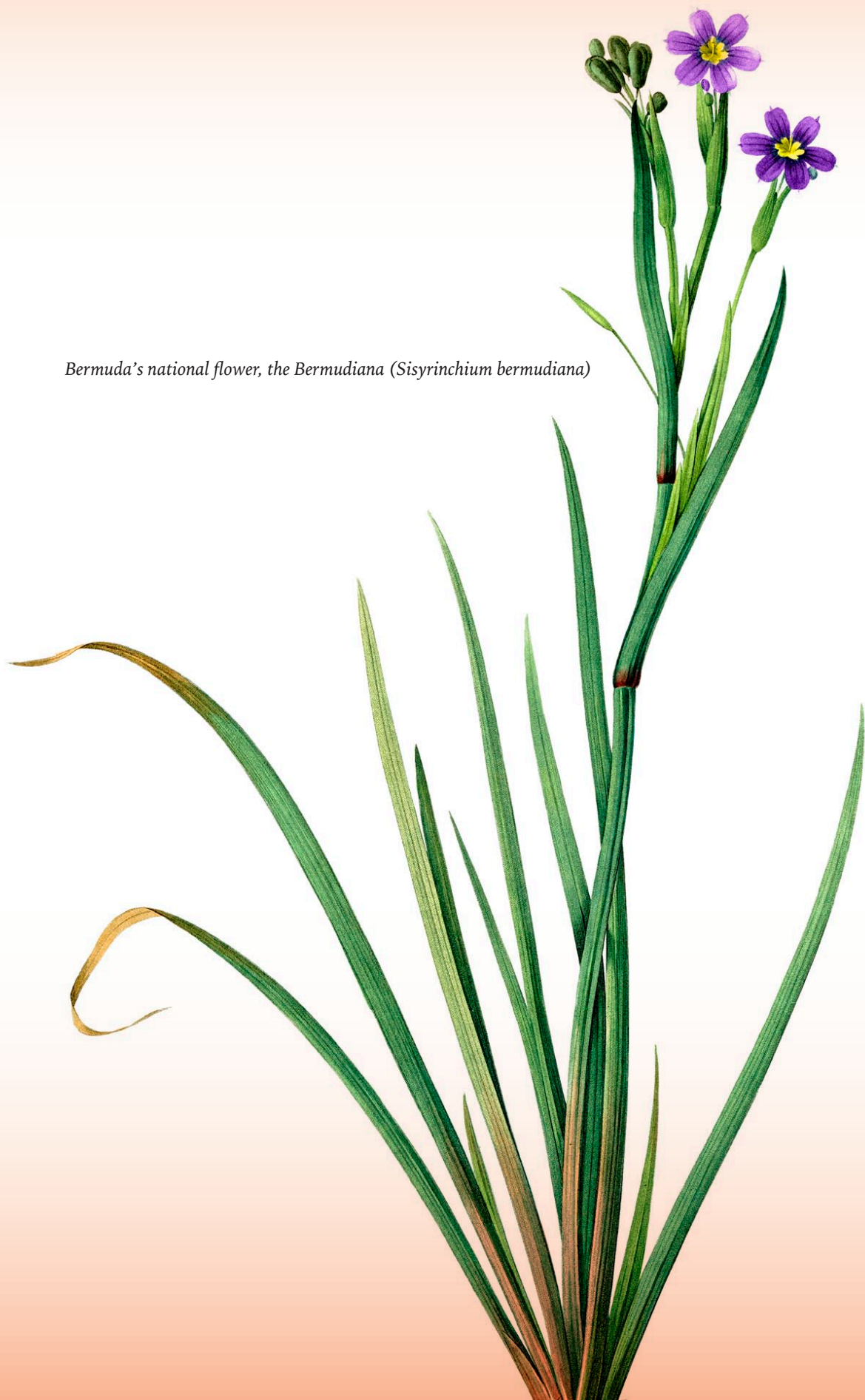
Public access to information has taken deep root across Bermuda. More and more Bermudians and residents are exercising their right to ask for public information that impacts their lives, families, businesses and communities. As Information Commissioner, my office will continue to champion transparency, upholding these rights as our country faces the challenges ahead.

One of the most significant developments in recent years is the Government's increasing use of public-private partnerships to finance and deliver key public sector projects. As we enter 2021, my office remains focused on the fact that these arrangements raise critical questions around public decision makers' transparency and accountability when procuring, considering, awarding and managing these agreements. I encourage the Government to ensure that the public is fully informed about the nature of these arrangements. Public decision makers should ensure that Bermudians and residents are aware of both the benefits and the long-term risks that are being assumed with each arrangement. With the appropriate access to public information, Bermudians and residents can understand and assess whether they believe that appropriate processes, monitoring, disclosures and other arrangements are in place to safeguard public accountability.

My Report and Recommendations on the Implementation of the PATI Act also makes recommendations for important improvements to the PATI Act's legislative framework and implementation. In the upcoming year, the ICO will engage with all stakeholders to encourage discussion, critique and considerations of these recommendations. Importantly, I encourage the Government to initiate broad and meaningful public consultation for any legislative changes to the PATI Act that impact Bermudians and residents' right to access public information.

The PATI Act strikes a careful balance between the need to maintain confidentiality and the requirements for disclosure of public records. Ultimately, the beneficiaries of this legislative framework are Bermudians and residents. In 2021, I, together with the ICO's resilient and nimble team of dedicated officers, will continue to promote, oversee and enforce PATI rights and obligations for the benefit of our country.

Bermuda's national flower, the Bermudiana (Sisyrinchium bermudiana)



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