

# MONTHLY ROUNDUP

Volume IV, Issue 4

MAY 2021

## WELCOME

The Information Commissioner's Office is a unique public authority for the people of Bermuda, focused solely on promoting and safeguarding public access to information by championing accountability, transparency and good governance. The work of the ICO's officers to protect and uphold PATI laws may not always be visible to the general public. This includes efforts such as monitoring the publication of public authorities' contracts with a total value of \$50K or more, encouraging decision makers' respect for public transparency around public spending, and working 'behind the scenes' with parties during reviews to resolve issues or improve PATI practices.

Along with the ICO's promotion and oversight of PATI rights for Bermuda and its residents, the ICO works to ensure that Bermuda's ICO has a voice in the international community amongst its peers. The recent election of Information Commissioner Gutierrez to the ICIC's first Executive Committee is a noteworthy milestone for the Bermuda ICO.

Our jurisdiction is small and our PATI law was recently passed and enacted (when compared to the laws in other countries). Yet, the Bermuda Information Commissioner's position amongst fellow Commissioners should not be overlooked in its importance. Bermuda's PATI regime and the ICO's oversight of it is an example and a standard that is gaining respect in this international forum. For such a small oversight team as the ICO, this election is powerful. Commissioner Gutierrez is mandated to safeguard and advance PATI standards for Bermuda. Serving on the ICIC's Executive Committee is an opportunity to also ensure that Bermuda's presence is recognized and respected amongst larger jurisdictions with long-standing public access law.

The ICO looks forward to the ongoing benefits from these international relationships contributing to the PATI rights and framework for Bermudians, residents and public authorities.

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"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."

Gitanjali S. Gutierrez,  
*Looking Ahead, 2020*  
Annual Report



## PUBLISHING CONTRACT DETAILS TO PROMOTE TRANSPARENCY & ACCOUNTABILITY



When it comes to public access to information, a big concern is how public money is spent. Increasingly, Bermudians and residents want to know why public money is spent a certain way (or not spent on other projects). Or how public authorities source, select and compensate particular vendors and whether a contract is managed effectively to get value for money (for the public). These concerns have become even more heightened with the current public and personal financial strains.

The PATI Act offers Bermudians and residents an important tool, putting them in a position to hold public authorities accountable and transparent. The Act requires all public authorities to automatically publish in an official gazette notice the details of their contracts for any goods or services with a total value of \$50,000 or more (section 6 of the PATI Act). This includes but is not limited to contracts for consultants and contractors, or for rent, IT services, repairs, construction and more. It also must be done on a regular basis. These gazette notices are available on the Government of Bermuda website in the electronic Official Gazette and in paper copies at the National Library and Archives. Through the ICO's Annual Return, the ICO tracks public authorities' compliance with this requirement to publish contract notices. All public authorities must complete and submit an ICO Annual Return every year.

Because public authorities must automatically publish this information, no one should have to file a PATI request to learn about these contracts. But the public can always alert the ICO if it appears that a public authority's contract gazette notices are unpublished.

Notice ID	Title	Public Authorities / Department	Sub Type	Publication Date
GN				

These gazette notices provide a good overview of what is happening with public money. These notices inform the public who the vendor is, what goods or services are being contracted, the total amount of the contract, and the dates for the services or delivery of goods. Publishing this public information is important. Not just for unsuccessful bidders of government projects but because the wider public is informed of how public money was spent and given the opportunity to assess for themselves if the money was well spent. It enables a bidder to make a follow up PATI request if they want to learn more about records surrounding a particular procurement initiative or successful submission. Or the public might see that a consultancy contract was awarded and want to know more about how the individual was selected. In other situations when a vendor is selected through a 'sole-source' or non-competitive process, transparency with the contract details may be a factor that contributes to ensuring value for money.

\* Continued on next page \*

## PUBLISHING CONTRACT DETAILS TO PROMOTE TRANSPARENCY & ACCOUNTABILITY...cont.

When both the public authority and vendors understand that they may need to explain the contract award or performance management of the contract, it may contribute to better procurement and contract management decisions in the future.

The ICO encourages the public to review published contract details throughout the year. Use the tools that are publicly available that allow you to be informed, be included, and be involved. This ensures that the public can play a tangible part in holding public authorities accountable for public spending decisions.

## INFORMATION COMMISSIONER GUTIERREZ ELECTED TO THE FIRST ICIC EXECUTIVE COMMITTEE

Information Commissioner Gitanjali Gutierrez has been elected to the first Executive Committee for the International Conference of Information Commissioners (ICIC) after certification of the vote on 10 May 2021. Information Commissioner Gutierrez previously joined her colleagues to adopt the ICIC Charter in March 2019 in Johannesburg, South Africa. Since that time, Commissioner Gutierrez has served on the ICIC's Governance Working Group to establish the governance working framework of the ICIC. The May 2021 elections resulted in the first elected Executive Committee for the ICIC. Her 3-year term will commence at the close of the ICIC's 2021 Annual Conference, which will be held 23-24 June, when the Executive Committee assumes responsibilities from the Governance Working Group.



“As an Executive Committee Member, the Bermuda ICO and our officers will continue to benefit from valuable international relationships for sharing information, building capacity and deepening knowledge. In turn, these interactions enable the Bermuda ICO to continually strengthen our oversight and promotion of PATI rights for Bermudians

and residents,” stated Information Commissioner Gutierrez. “Membership on this committee ensures that Bermuda’s ICO is at the international decision-making table with our colleagues. We have an opportunity to contribute our insights as a small, nimble oversight body in a smaller jurisdiction, ensuring that the ICIC’s work benefits Information Commissioners from a diversity of jurisdictions”.

The full list of elected ICIC Executive Members is available [HERE](#).



## LEARNING ABOUT THE RIGHT OF ACCESS THROUGH THE INFORMATION COMMISSIONER'S REVIEWS

When you, as a Bermudian or resident, want to request certain records from a public authority, the PATI Act gives you the legal right to ask for it yourself. No need to wait for a government press conference or the media to publicly report on a topic of interest. To be a PATI requester, you don't have to be an activist or a journalist. Simply being a curious Bermudian or resident makes you a legitimate PATI requester.



Also understand that as a PATI requester, you don't need to defend why you are interested in the records that you are asking for. The public must be assured by how the PATI Act secures this legal right to access public records held by public authorities, subject to the provisions of the Act (where the authority might not be required, under an administrative ground or an exemption, to grant you access to the records you seek).

As ICO investigators, we see up-close many examples of how this right of access is being protected in practice. Sometimes it is through the Information Commissioner's power to review a public authority's handling of a PATI request, when certain missteps can be corrected for the authority to bring itself in compliance with the Act. Classic examples are 'failure-to-decide' reviews. Other times it is through the PATI requester taking ownership of their right to request access. An example is when the requester openly responded back to the public authority who was struggling to understand the focus of the original request. This exchange then prompted the public authority to consider ways it could do better to proactively communicate about its operations with its constituents – the Bermuda public. At times it is the public authority setting out in its decision letters just how comprehensively it had processed the request, with clear, complete and accurate responses which impressed on the requester that they were heard.

The Information Commissioner's decisions are legally binding, so the review process and her decisions must be conducted and drafted with care. Detailed examples of how the Information Commissioner's reviews enforce the public's right to information are set out in her public decisions. Look at [Decision 06/2019, Judicial Department](#) to learn how the requester could finally access certain court recordings after previously being told that the records did not exist. Another example is the public disclosure of the KPMG report on Sandys 360, as a result of [Decision 09/2019, Department of Public Lands and Buildings](#).

In case you missed it, check out our Investigator's Insight series in these past Monthly Roundups:

[Reviews during lock-down](#) (April/May 2020)

[Principle of independence](#) (August 2020)

[Principle of fairness](#) (October/November 2020)

[Principle of integrity](#) (April 2021)

## TIPS CORNER FOR PUBLIC AUTHORITIES & PATI REQUESTERS

*This section highlights useful tips for effective ways to participate in a PATI request process.*

### Tip for Information Officers:

Before you start to search for responsive records in Outlook, check your search 'advanced find' settings. See which option is selected: to search the 'subject field and message body', or the 'subject field' only.

### Why it makes sense?

The public authority's search efforts must be reasonable to meet the requirements of the PATI Act. Whether an email's subject field contains the right keyword is usually a matter of personal habits. Making an easy change – by selecting the 'subject field and message body' option – can help ensure your search results do not miss relevant emails. If the goal is to conduct a reasonable search, checking your email search settings first is a simple way to ensure the effort you put into the search will actually produce the results you seek.

**Kudos** to those Information Officers who seek out ways to improve their electronic searches and share their knowledge with colleagues.



### Tip for PATI Requesters:

When asking for records on a topic you have been communicating about with the public authority, consider whether you want the records disclosed to you to include your own correspondence with the public authority.

### Why it makes sense?

If you want to confirm that the public authority actually has a copy of your emails, then it makes sense to specify in your PATI request that the records to be processed should include emails with you. But if you already have these records, i.e. because the public authority replied and you continue to have access to your own email account, then it might make sense to specify in your PATI request that the public authority may exclude your emails with the public authority from the records being processed for public release.

**Kudos** to requesters who work cooperatively with public authorities, for instance by agreeing on relevant search terms and other parameters. This can reduce the burden on the public authority when processing records responsive to your request, hopefully leading to a successful PATI experience for everyone.





## Q&A CORNER WITH THE ICO

*Highlights of some of the ICO's recent responses to enquiries*

**I Want to Know** about how to contact an Information Officer...

**Q:** Where can I find the contact for a public authority's Information Officer?

**A:** Check the public authority's PATI Information Statement. It is a document required by law to give the name and contact for the Information Officer, among other details. Government posts PATI Information Statements at [www.gov.bm](http://www.gov.bm). The ICO posts them at [www.ico.bm](http://www.ico.bm). You should also be able to find a copy at the principle office for each public authority, as well as at the Bermuda National Library. If you want to check that the details online are current, call the public authority or the ICO.

**I Want to Know** about confidentiality...

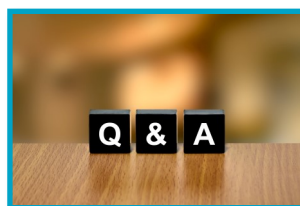
**Q:** I am concerned the Information Officer might not keep my identity as a requester confidential. What can I do?

**A:** The law requires the Information Officer to confirm the requester is eligible to make a request (i.e. is a Bermudian or resident), so you must identify yourself to the Information Officer. But this is balanced with public authorities' duty to keep your identity as a PATI requester confidential. If you ask for your own personal information, your request might give away your identity to other staff of the public authority who are not Information Officers. All of the officers or staff, though, have a duty to keep a requester's name confidential. If you are still not comfortable making the request, try asking someone else to make the request instead.

**I Want to Know** about meeting minutes...

**Q:** I read this public authority's meeting minutes, posted on its website. The level of detail is too limited for my interests. How can I get more detail from the public authority?

**A:** Published minutes are a helpful starting point to learn about a public authority's work at any given time. By making a PATI request, Bermudians and residents can ask for other records discussed in the minutes to be disclosed (e.g. a report, memo or budget referred to). Remember to be specific when describing the records, enough so that the Information Officer knows what you are looking for. The PATI Act does not require public authorities to proactively disclose meeting minutes, so we commend public authorities that are following best practice by doing so already.



**SAVE THE DATES****Information Commissioner's Virtual Quarterly Briefings**Friday, 18 June 2021 **\*REVISED DATE\***

10:00am - 11:00am

Topic: Information Commissioner's Report and Recommendations on the  
Implementation of the PATI Act

Thursday, 16 September 2021

10:00am - 11:00am, Topic: TBC

ICO Briefings are for public authorities only.  
Registration details will be sent directly to them.**International Conference of Information Commissioners (ICIC)  
12th Annual International Conference Virtual Public Session**

Wednesday, 30 June 2021

*Blurred boundaries in access to information: home office and public records management***ICO STATISTICS AS OF 31 MAY 2021**

(from 1 April 2015)

Total applications for independent review by the Information Commissioner .....	166	Closed: Decided .....	79
Pending investigations .....	38	Closed: Resolved .....	20
Applications pending validation .....	2	Closed: Abandoned .....	7
		Closed: Invalid .....	20

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