

MONTHLY ROUNDUP

Volume IV, Issue 10

NOVEMBER 2021

WELCOME

The Information Commissioner's Office (ICO) welcomes you to the November 2021 issue of our Monthly Roundup. The ICO is an independent public office that promotes and enforces the Public Access to Information (PATI) Act 2010 in Bermuda.

The ICO's Monthly Roundup offers helpful information about PATI rights and practice for both the public and public authorities.

In this issue, we take a closer look at the Information Commissioner's recently issued decisions and a recap of her recent interview with Bermuda Youth Connect on Instagram Live. Finally, the ICO continues to expand our team. To support our increasing work, the ICO is hiring a Deputy Information Commissioner. Details for how to apply are shared in this issue.

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- Information Commissioner's recent decisions
- Monthly statistics for ICO cases
- Let's Get PATI with Bermuda Youth Connect

"When the right data are in the right hands at the right time, decisions can be better informed, more equitable, more likely to protect children's and adolescents' rights."

Source: How to use data for advocacy,
[voicesofyouth.org](https://www.voicesofyouth.org)



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DECISIONS ISSUED

During November, the Information Commissioner received 5 new applications and issued 3 decisions. Highlights are below.

How are records that discuss a public authority's deliberations handled? **Decision 14/2021** provides some insight.

Are you processing a PATI request and thinking of relying on the exemption in section 29 about deliberations of public authorities? Or have you received a public authority's decision refusing your PATI request under that exemption? If you responded 'yes' to either question, or are interested in understanding the exemption better, read the Information Commissioner's **Decision 14/2021**, [Office of the Governor \(Government House\)](#).

The Decision looked at Government House's denial of public access to records on complaints against certain judicial officers made to the Governor. While it had initially disclosed a number of responsive records, Government House decided to withhold the rest of the records under section 29 of the PATI Act. It believed that disclosing these remaining records would undermine its deliberations on complaints made against judicial officers. This included refusing to disclose which individual members of the Judicial and Legal Services Committee (JLSC) had assisted the Governor with considering the complaints.

In this **Decision**, the Information Commissioner elaborated on the exemption in section 29. She emphasised that, for the exemption to be engaged appropriately, public authorities must identify the specific deliberative process and demonstrate how that process could be undermined by disclosure. In accordance with the PATI Act, the exemption cannot apply to factual information contained in a responsive record. The Information Commissioner set out the definition of 'factual information', and cautioned that certain information appearing to be factual might still be exempt where it is "so inextricably connected with the deliberative material that disclosure would reveal and cause harm to the public authority's deliberation." The exemption would also be engaged appropriately when a record contains selective factual information "collated from a larger group of facts, and the distilling of facts itself is a deliberative process."

In considering Government House's internal review decision, the Information Commissioner reviewed the withheld records to determine whether they contained factual information that should have been disclosed to the Applicant. At the end of her review, she concluded that many parts of the records should continue to be withheld from the public. She also found that certain records contained factual information that fell within the exception in section 29(2)(a) and thus could not continue to be withheld under section 29. Such factual information included the names of the JLSC members and their involvement in the handling of the complaints. Although not exempt under section 29, the Information Commissioner found it to be personal information, whose disclosure was not in the public interest, and therefore exempt under another provision of the PATI Act.

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DECISIONS ISSUED...cont.

Can the timeframes in the PATI Act be suspended or changed? Read Decision 15/2021 to learn more.

When handling this PATI request, the Head of Authority for the Department of Child and Family Services (DCFS) asked the PATI requester to explain why they were challenging the initial decision. While awaiting the requester's clarification, the six-week statutory deadline for issuing the internal review decision passed. Around the same time, a new Permanent Secretary was assigned to the Ministry, so the Head of Authority changed. The Applicant wrote to the new Head of Authority, setting out details of their reasons for having requested an internal review of DCFS's initial decision. They also proposed for the six-week internal review timeframe to reset as of their email date.

As the Applicant had not received an internal review decision within six weeks of their email, they applied to the Information Commissioner for an independent review. The requester suggested the relevant internal review request date was when they had written to the new Permanent Secretary. Conducting this independent review was a good opportunity for the Information Commissioner to clarify important points about statutory timeframes for the benefit of all parties.

Timeframes in the PATI Act are meant to support the public's right to access non-exempt records. Although the timeframes for internal reviews are firm, PATI requesters and public authorities may agree to operate beyond them in a cooperative manner. The Information Commissioner encourages parties to take a good faith, practical approach when it is workable to do so. A lenient approach to timeframes may help the requester to access the records they want more quickly and to a greater extent. But it should be balanced with ensuring that the right of review is protected.

While a public authority may appropriately seek clarity from a requester, such action cannot suspend or change the statutory deadlines under the PATI Act. It also cannot affect the deadline for a PATI requester to seek an independent review by the Information Commissioner when the public authority fails to issue a timely internal review decision. Further, no provision in the PATI Act affords the Information Commissioner the authority to alter the deadline for a requester to apply to a public authority for an internal review.

In **Decision 15/2021**, the Information Commissioner affirmed that the correct date for the internal review request was when it had been first made to the then Head of Authority, not the requester's later, clarifying email. The PATI Act does not require a requester to explain their reasons for being dissatisfied when asking for an internal review or an independent review. Even still, the ICO encourages requesters to take this extra step whenever reasonable, as a matter of good communication. Doing so is likely to assist the reviewer in focusing their attention on points of disagreement.

To read the full Decisions and others by the Information Commissioner, visit www.ico.bm.

ICO STATISTICS AS OF 30 NOVEMBER 2021

(from 1 April 2015)

Total applications for independent review by the Information Commissioner	188	Closed: Decided	91
Pending investigations	42	Closed: Resolved	20
Applications pending validation	4	Closed: Abandoned	7
		Closed: Invalid	24

OUR TEAM IS GROWING!

The ICO has an opening for the **Deputy Information Commissioner**.

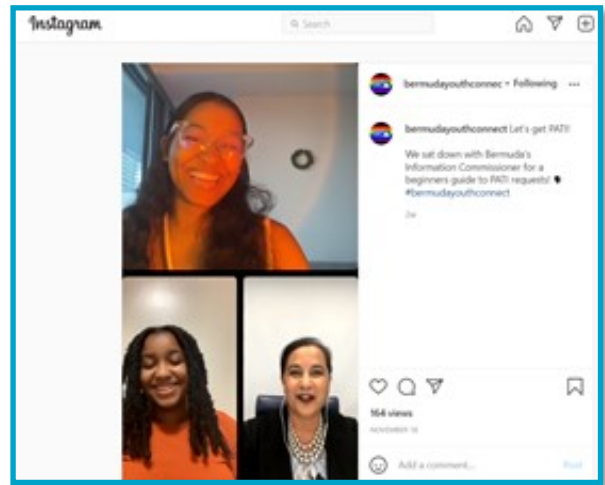
We're hiring!

Visit ico.bm/job-openings for more information.
The application deadline is 23 December 2021.

LET'S GET PATI WITH BERMUDA YOUTH CONNECT

On 18 November Commissioner Gutierrez participated in her first Instagram live with Tierrai Tull and Veronica DeGraff of Bermuda Youth Connect. The lively discussion touched on many PATI-related topics while also addressing specific questions from the audience.

With these young leaders and their engaged audience, the Commissioner had the opportunity to speak specifically on why PATI rights are important for students. As an independent good governance body, the ICO oversees Bermudians (both living at home or around the world) and residents' right to access public records, which local public authorities hold. The Commissioner touched on how a PATI request can be used by students to gain access to factual information as part of their academic research, such as statistics, financial records or policies that impact the local community. She reiterated that public authorities have a duty to assist PATI requesters, as individuals attempt to gain access to records. This is in addition to public authorities having up-to-date Information Statements available to the public.



Bermuda Youth Connect Co-Hosts Tierrai Tull and Veronica DeGraff and Information Commissioner Gutierrez.

An interesting dialogue developed around the perception that people are not making many PATI requests. The Commissioner shed light on the fact that many PATI requests are happening quietly and receive no media attention because individuals are making those PATI requests for specific purposes that impact their lives or their community. To dispel this perception, the Commissioner spoke about individuals being personally motivated to want to be informed, and taking the action to make a PATI request. She discussed how the younger generations have an expectation of being informed and receiving information, and of having a voice and being involved. The hosts and Information Commissioner reflected on how PATI requests can level the playing field between them as young people and public decision-makers. One key takeaway from the dialogue was that unlike voting, you do not need to be 18 years old to make a PATI request in Bermuda. There is no age limit for persons making a PATI request, which makes it possible for young Bermudians to exercise their legal 'right to know', possibly before they exercise their legal right to vote.

The Information Commissioner and hosts also discussed examples of accountability, transparency and outstanding changes in public services that have resulted from highly publicized PATI disclosures.

Listen to the full conversation **HERE!** Post your feedback on the ICO's and Bermuda Youth Connect's social media.