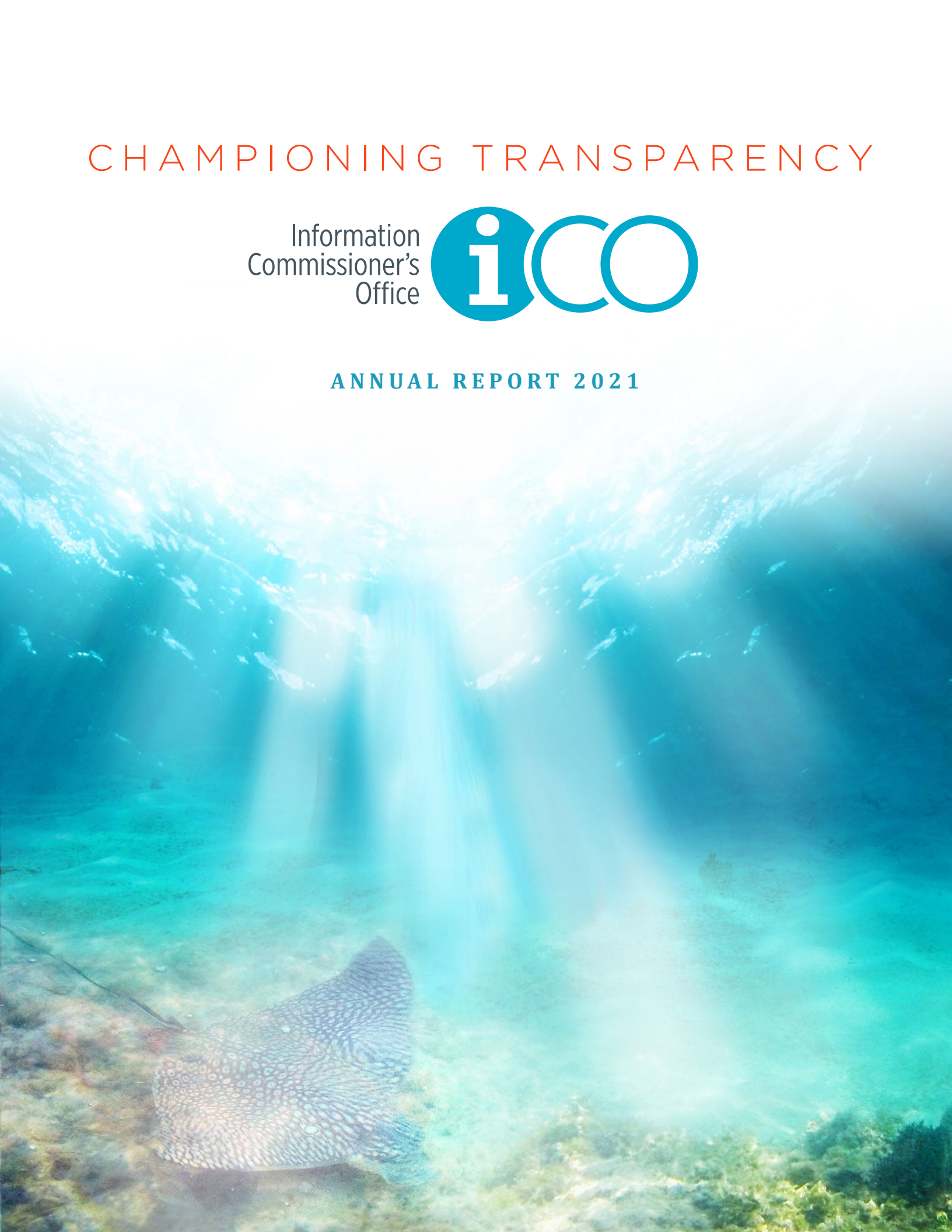


CHAMPIONING TRANSPARENCY



ANNUAL REPORT 2021



iCO 2021 HIGHLIGHTS

“The increased use of the PATI Act is consistent with the results of the ICO’s annual public awareness survey. The public values the PATI Act and uses the rights it affords Bermudians and residents.”

Information Commissioner’s Welcome. P. 2



FIRST Instagram
Live interview by the
Information Commissioner
P. 15



9 Monthly
Roundups
published
P. 16



4 new
public awareness
videos released
P. 17



9,000+
engagements for
social media posts
P. 17



333,500+
reach for social
media campaigns
P. 17



80% of the public
believe that creating and
enforcing the PATI Act is a very
important public investment
P. 19



39 new applications
for an independent
review by the Information
Commissioner in 2021
P. 22



86% increase in
the applications for an
independent review by the
Information Commissioner in
2021 compared to last year
P. 22



22 Decisions issued by
the Information Commissioner
P. 26



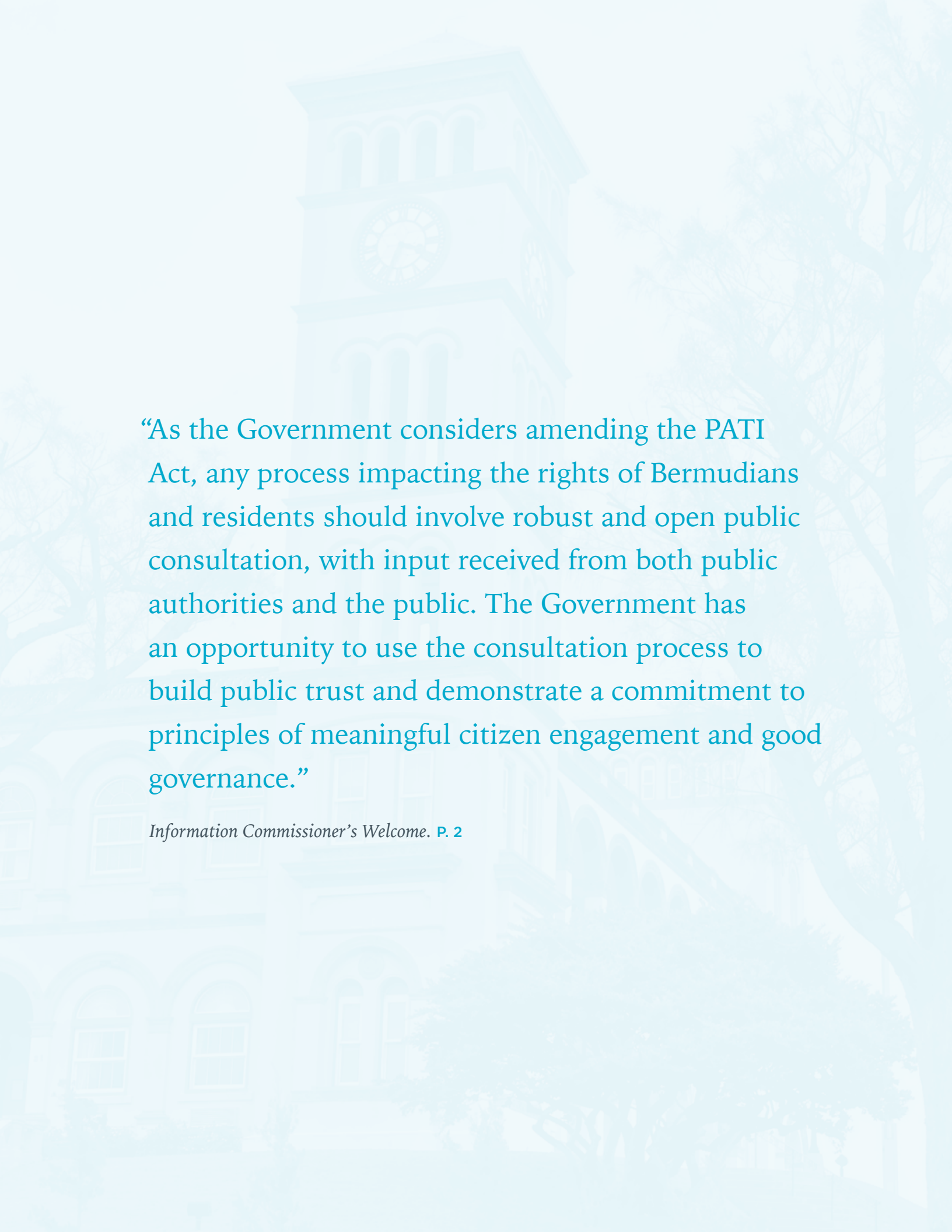
48% of public authorities'
initial responses in 2021 to a
PATI request granted access
in whole or in part to public
records
P. 36



250% more failure-
to-decide applications to the
Information Commissioner in
2021 compared to last year
P. 24



16% more PATI
requests made in 2021
compared to 2020
P. 36



“As the Government considers amending the PATI Act, any process impacting the rights of Bermudians and residents should involve robust and open public consultation, with input received from both public authorities and the public. The Government has an opportunity to use the consultation process to build public trust and demonstrate a commitment to principles of meaningful citizen engagement and good governance.”

Information Commissioner's Welcome. P. 2

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- 4 THE INFORMATION COMMISSIONER'S OFFICE
- 8 THE PUBLIC ACCESS TO INFORMATION ACT 2010
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*Transmittal
Laid before each House of the Legislature in March 2022, as
required by section 58(1) of the Public Access to Information
Act 2010.*

WELCOME



I am honoured to welcome you to the 2021 Annual Report of the Information Commissioner. This Annual Report offers an overview of the operations of the Public Access to Information (PATI) Act during the 2021 calendar year. It also highlights the work of the Information Commissioner's Office (ICO) during the 2021-2022 fiscal year, 1 April 2021 to 31 March 2022.

In 2021, the ICO successfully navigated the ongoing disruptions and challenges of the year. We ensured that our office continued to add value for public authorities by offering virtual Information Commissioner's Briefings, guidance and presentations on the requirements of the PATI Act along with the many tools available for public authorities to successfully meet these requirements.

In addition to our general public education offerings, we focused the ICO's outreach efforts on youth-oriented audiences and communities impacted by the current financial circumstances. Today, more than ever, the future of Bermuda rests with the many young leaders taking action on issues ranging from climate change to labour and economic rights to immigration policies to racial equality to educational reform. Young people expect to be informed, included and involved on these issues, and increasingly recognise they have a right to receive information critical for decisions about their future. Similarly, the ICO's outreach sought to educate community

groups about the power of PATI rights to help their members navigate their interactions with public authorities. With PATI rights in hand, Bermudians and residents can ask for information they need.

The ICO also saw a significant increase in our workload in 2021, both in terms of the applications for an independent review by the Information Commissioner and the number of cases that we closed. Bermudians and residents are continuing to make PATI requests—and to exercise their right to a review by the Information Commissioner to ensure the disclosure of information to the public. This year also saw an important judicial review to clarify the scope of the Information Commissioner’s authority to examine records when conducting a review, and it remains an ongoing matter. The increased use of the PATI Act is consistent with the results of the ICO’s annual public awareness survey. The public values the PATI Act and uses the rights it affords Bermudians and residents.

Not all PATI developments have been positive, though. Two concerning trends emerged this year. First, the ICO saw a substantial increase in Information Commissioner’s reviews where public authorities failed to decide on internal review requests, including ones where the requester did not receive any initial response. Although no two reviews involved the same circumstances, overall it raises concerns about public authorities’ capacity and support to meet the public’s most basic rights under the PATI Act. In many instances, it is not a matter of increasing resources but of using existing tools more effectively and efficiently.

The second trend affirms my long-standing call for the PATI Act to allow Bermudians and residents to make PATI requests anonymously. For the first time, the ICO’s annual public awareness survey measured the public’s confidence in the ability of public authorities

to safeguard their identity as PATI requesters. The results of the survey are disappointing, but not surprising. Only 31% of the respondents believed that a public authority would safeguard their confidentiality when making a PATI request. The Government’s 2019 *Strategic Plan for Government Reform* seeks to increase public trust and promote transparency. This is an area where its practice is falling short, but improvements can be easily adopted to restore public faith.

As the Government considers amending the PATI Act, any process impacting the rights of Bermudians and residents should involve robust and open public consultation, with input received from both public authorities and the public. The Government has an opportunity to use the consultation process to build public trust and demonstrate a commitment to principles of meaningful citizen engagement and good governance. At each stage in the amendment process, stakeholders should assess whether the challenges in implementing the PATI Act and upholding the public’s right to know arise from provisions of the PATI Act or from the need to improve the practices and capacity of public authorities. Although my 2021 *Report and Recommendations on the Implementation of the PATI Act* discusses examples of the former, more often it is the latter that causes burden and inefficiencies for public authorities and undermines the PATI rights of Bermudians and residents.

Finally, I express my sincere gratitude to the skilled, dedicated and nimble officers of the ICO. The accomplishments of the ICO in 2021 are possible only because of their commitment to good governance, transparency and the PATI Act.

GITANJALI S. GUTIERREZ
INFORMATION COMMISSIONER



THE INFORMATION COMMISSIONER'S OFFICE

THE INFORMATION COMMISSIONER'S MANDATE

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

Raise public awareness about PATI rights and how to use them

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

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 principles of independence, integrity and fairness.

ICO TEAM



GITANJALI S. GUTIERREZ
INFORMATION COMMISSIONER



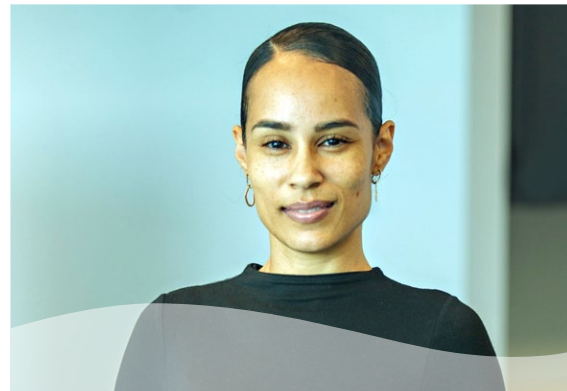
ANSWER STYANNES
INVESTIGATION OFFICER



LAKAI DILL
INVESTIGATION OFFICER



SHEENA BASSETT
PROJECT OFFICER



TIKITTA SUHARTONO
OFFICE MANAGER

ICO 2021 TIMELINE

MAY 2021 – MARCH 2022

MAY 2021

- Information Commissioner Gutierrez participates in Governance Working Group's virtual meeting for the International Conference of Information Commissioners (ICIC)
- Information Commissioner Gutierrez elected to the first Executive Committee for the ICIC
- *Audited Financial Statements of the ICO for the fiscal year ending 31 March 2020* tabled in the House of Assembly
- ICO Staff attend EAP Training on *Self-Care at No Cost*
- ICO officers attend ICIC webinar, *Transparency and Trust in Pandemic Times*

JUNE 2021

- Information Commissioner's Virtual Quarterly Briefing for public authorities held
- Information Commissioner Gutierrez participates in final virtual meeting for the Governance Working Group of the ICIC
- Information Commissioner and Investigation Officers attend the virtual 12th Annual International Conference of Information Commissioners (ICIC)
- ICIC adopts resolution *Proactive Publication of Information Relating to the COVID-19 Pandemic*, supported by Information Commissioner Gutierrez
- ICO officers attend ICIC webinar *Blurred Boundaries in Access to Information: Home Office and Public Records Management*

JULY 2021

- ICO officers attend ICIC webinar, *Privacy and Transparency in Health Issues*

AUGUST 2021

- ICO outreach with Gina Spence Productions' annual Each One Reach One campaign and Champions Programme
- Information Commissioner attends *On Camera Ready Training*
- Information Commissioner and Project Officer participate as presenters during the Future Leaders Programme's three-week empowerment experience
- During the Future Leaders Community Give-Back event, the ICO hosted an outreach booth and Information Commissioner Gutierrez gave a presentation on PATI rights
- ICO officers attend ICIC webinar, *Access to Information and Freedom of the Press*

SEPTEMBER 2021

- Information Commissioner's Quarterly Briefing for public authorities held
- Information Commissioner Gutierrez delivers virtual International Right to Know Day Declaration
- ICO's "What Do YOU Know Now?" four-part video series released
- Information Commissioner Gutierrez is a guest on *The Daily Hour*
- Information Commissioner's Award presented to outstanding Information Officers
- ICO publishes *Guidelines and Procedures: Responding to PATI requests for public records*

OCTOBER 2021

- Information Commissioner Gutierrez delivers virtual PATI presentation to West Pembroke Primary PTA
- Information Commissioner Gutierrez attends ICIC Executive Committee Virtual Meeting
- Information Commissioner Gutierrez delivers virtual PATI presentation to Regulatory Authority of Bermuda Board and staff

NOVEMBER 2021

- Hearing held in Attorney General v Information Commissioner [2022] SC (Bda) 6 Civ
- Information Commissioner Gutierrez interviewed by Bermuda Youth Connect on Instagram Live
- 2021 ICO Annual Return package distributed to public authorities

DECEMBER 2021

- Information Commissioner's Quarterly Briefing for public authorities held
- Information Commissioner Gutierrez delivers virtual PATI presentation to Bermuda Educators Council

JANUARY 2022

- Supreme Court issues decision in Attorney General v Information Commissioner [2022] SC (Bda) 6 Civ

FEBRUARY 2022

- Information Commissioner Gutierrez attends ICIC Executive Committee Virtual Meeting

MARCH 2022

- Information Commissioner's Quarterly Briefing for public authorities held
- Information Commissioner Gutierrez attends ICIC Executive Committee Virtual Meeting



THE INFORMATION COMMISSIONER IS COMMITTED TO MAKING DECISIONS BASED UPON A FAIR, INDEPENDENT AND RESPONSIBLE APPLICATION OF THE PATI ACT 2010.



THE 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

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.

These include the right to:

Access non-exempt records held by public authorities

Have your name stay 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

A PATI requester has a right to an initial decision and an internal review decision 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

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**

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

For an overview of the Information Commissioner's oversight set out in 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!**

WHAT IS A 'PATI REQUEST'?

A PATI request is a written request for a copy of a record that is held by one of Bermuda's public authorities. Bermudians and residents have a right to make a PATI request. Whether they receive access to the records is determined by the provisions of the PATI Act.

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.



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.

Decide which public authority probably has the records that you want.

A list of the almost 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.

Submit your written PATI request to the public authority.

The PATI request should be in writing. It can be given to anyone in that public authority, but directing it to the public authority's Information Officer will make your request easier to track.

The **1-2-3** of submitting a PATI request

- 1 Put it in writing.** (*email and letters are fine*)
- 2 Be specific** and describe the records enough so the Information Officer knows what you are looking for.
- 3 Say how you want to receive** the information.
(*electronic copies are free*)

DUTY TO ASSIST

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

NEED HELP? JUST ASK!

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 initial decision, 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.



WHAT WE DO

STRENGTHENING THE RIGHT

1 APRIL 2021 - 31 MARCH 2022

RAISING PUBLIC AWARENESS

The ICO continued to reinforce the benefits of the PATI Act by empowering individuals to use their PATI rights and by strengthening the public’s understanding of how to use their legal rights effectively. During this period, the ICO adopted a two-pronged approach to these public awareness efforts, involving direct outreach to specific community groups along with a variety of general education initiatives for the broader public.



OUTREACH EFFORTS

The ICO focused its outreach efforts on youth-oriented organisations as well as communities impacted by the current economic climate.

Initiatives this year included the ICO’s participation in the Future Leaders Programme in August 2021. The Information Commissioner and the ICO’s Project Officer spoke to the cohort of students about the work of the ICO, democratic responsibility, leadership and their legal rights as youth under the PATI Act. This opportunity allowed for candid questions and answers during the discussion, which provided fresh, first hand and thoughtful insight on Bermuda’s PATI rights from a representation of Bermuda’s brightest young minds.

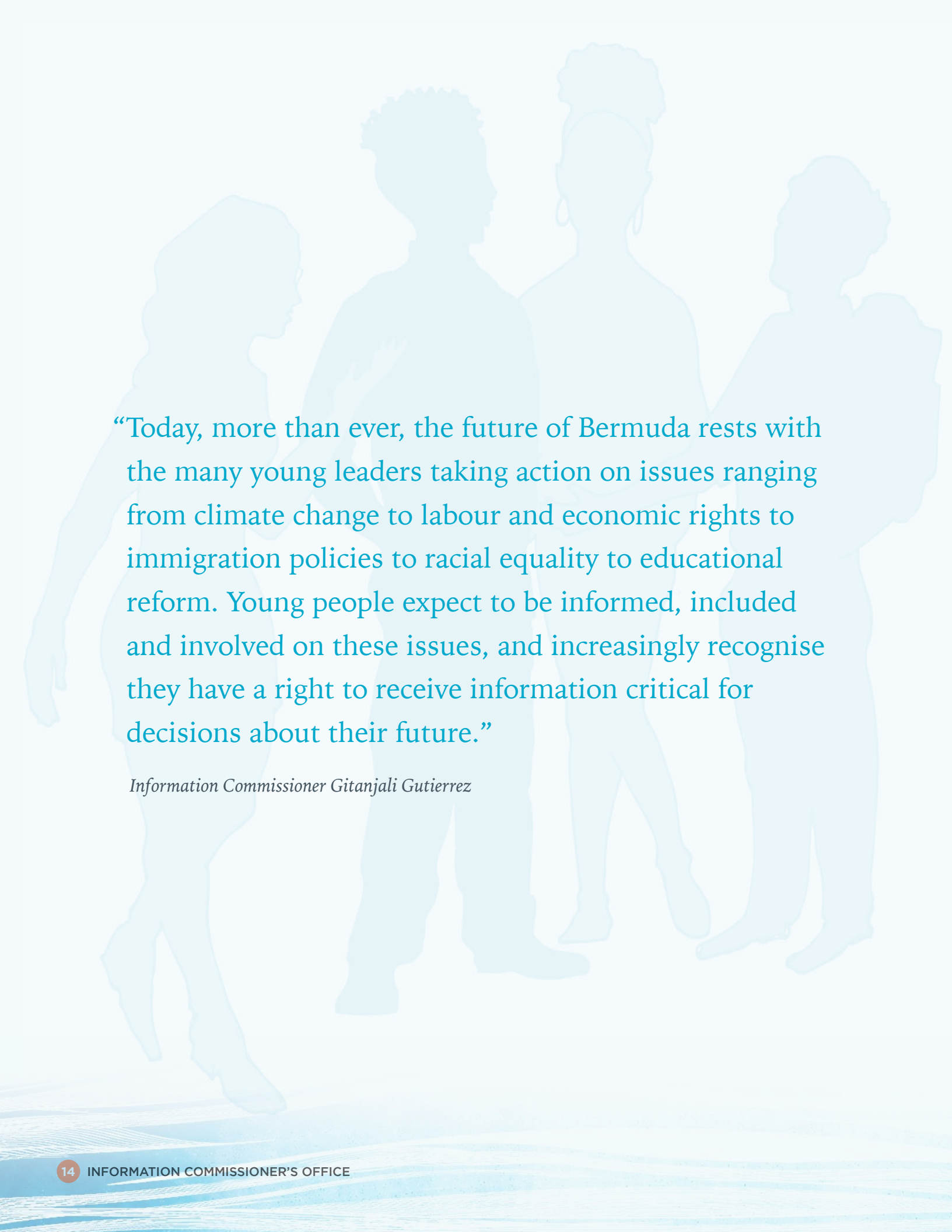
Following the summer programme, the ICO hosted an information booth at the Future Leaders back-to-school event held at the Berkeley Institute. The ICO team distributed know-your-rights brochures and youth-oriented gift bags to school-aged children and their families. This event provided an opportunity for the ICO team to speak one-on-one with members of the community about using their PATI rights.



PHOTO CREDIT: DAVID FOLEY



The Future Leaders back-to-school event.

The background of the page features light blue silhouettes of four diverse young people walking together from left to right. The silhouettes are semi-transparent, allowing the text to be overlaid. The group includes a woman on the left, a man in the center, a woman on the right, and another man on the far right. They are dressed in contemporary, casual attire. The overall aesthetic is clean and modern, with a focus on youth and diversity.

“Today, more than ever, the future of Bermuda rests with the many young leaders taking action on issues ranging from climate change to labour and economic rights to immigration policies to racial equality to educational reform. Young people expect to be informed, included and involved on these issues, and increasingly recognise they have a right to receive information critical for decisions about their future.”

Information Commissioner Gitanjali Gutierrez

Information Commissioner Gutierrez went on her first Instagram Live interview, **Let's Get PATI** hosted by Bermuda Youth Connect. The group was founded by young Bermudians who strive to bridge “the gap between the youth of Bermuda and our leaders”. The discussion included a live Q&A with their viewers throughout the interview.



In August 2021, the ICO collaborated with Gina Spence Productions for their annual back-to-school **Each One Reach One (EORO)** campaign. The ICO provided the charity with know-your-rights brochures and youth-orientated gift bags for families in need. In addition to the EORO campaign, the ICO supported Gina Spence Productions' Champions Programme, which provides support to children left behind due to the loss of a parent resulting from gun or other violence. The ICO provided 40 youth-oriented gift bags to the children currently in this programme.



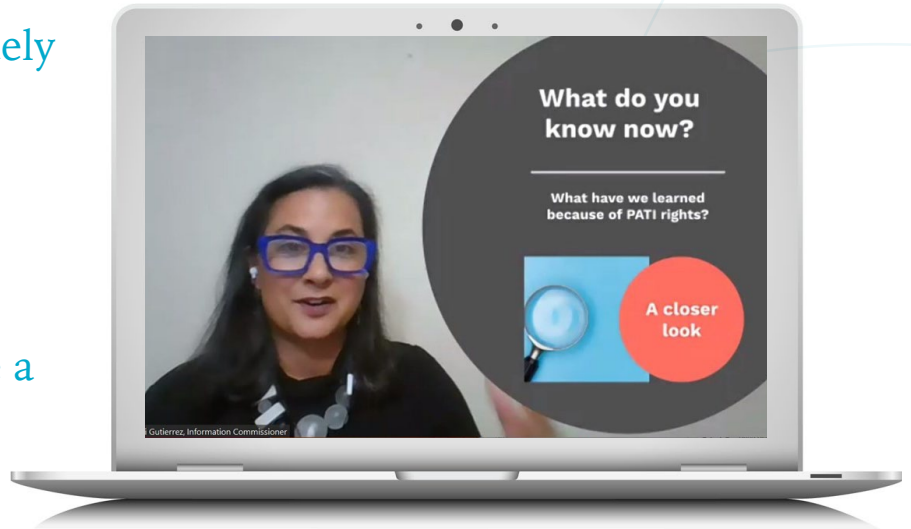
Information Commissioner Gutierrez and Rev. Dr. Gina Spence, Founder and CEO of Gina Spence Productions

EDUCATION INITIATIVES

The ICO continued to provide virtual PATI presentations to a variety of groups across the community. West Pembroke Primary Parent Teacher's Association, Bermuda College Board of Governors, Regulatory Authority Board of Directors and staff, Bermuda Educators Council and the Pembroke Rotary Club all took advantage of the opportunity to host PATI presentations with Information Commissioner Gutierrez.

“The presentation was definitely excellent. The visuals, and explanation of the services available, and the examples given were very insightful. Personally, I took away quite a bit of information from it.”

Education program participant



ICO MONTHLY ROUNDUPS

Nine Monthly Roundups were published on ico.bm and 512 individuals received email notices of publication. During 2021, the content of the Monthly Roundup provided accessible summaries of the Information Commissioner's Decisions and their learning lessons. The Monthly Roundup also continued to offer insights, expertise, guidance and tips for both the public and public authorities on using the PATI Act. Developing value-added content in the Monthly Roundups contributes to more informed debates and engagement among all PATI stakeholders.



ONLINE OUTREACH

As Bermuda continued to experience limitations on in-person activities and ongoing remote working environments, the ICO maintained its active social media presence. The ICO's Facebook page and sponsored content kept the public informed about press releases, Monthly Roundups, educational events and Decisions from the Information Commissioner, among other topics. In 2021, the ICO also moved to delivering more video content to improve the accessibility of the information. During the 2021-2022 budget year, the ICO had over 333,500 reaches and 9,000 engagements with Facebook users.

The ICO's average website session duration was 1:01 minutes and the website had a larger percentage of new visitors. In 2021, 80.6% of website users were new users (compared to 77% in 2020), with a smaller portion, 19.4%, being returning users.

RIGHT TO KNOW WEEK 2021

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, the ICO celebrated International Right to Know Week by focusing on the theme **"What Do YOU Know Now?"** The ICO recognised that Bermudians and residents have confidently used the PATI Act for over six years. The ICO focused on this theme by releasing a four-part video series, entitled *"What Do YOU Know Now?"*. Each video highlights powerful examples of information now publicly available because Bermudians and residents exercised their PATI rights. Available on the ICO's social media platforms, the videos discussed:

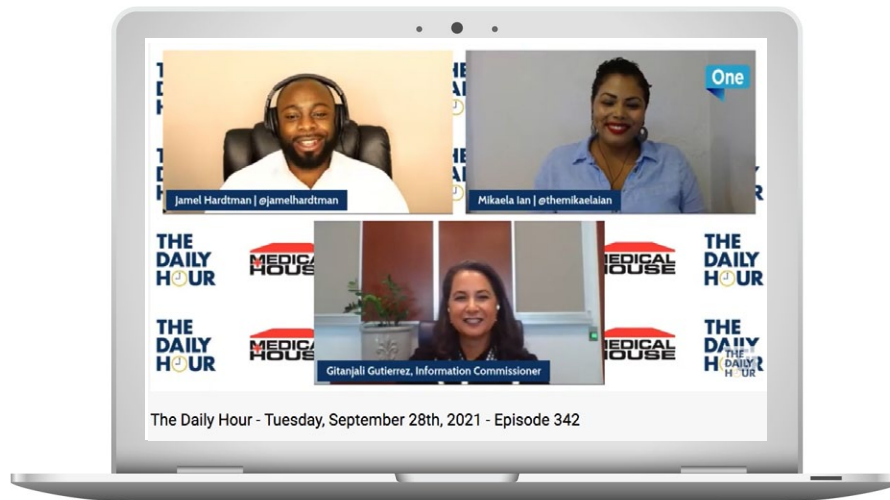
- The reasons for public decisions
- Public sector salaries
- Public spending and contracts
- Quality of life and public services



"This information matters because public spending is paid for by the public. Transparency allows you to understand where your public dollars are going, whether the public is getting value for money and whether a public procurement process was proper and effective.

Because of the PATI Act, you know more about public spending."

On International Right To Know Day, Information Commissioner Gutierrez returned as a guest on *The Daily Hour*. She shared with their interactive audience examples of how exercising the rights under the PATI Act benefits not only the PATI requester but ultimately Bermuda as a community, especially when PATI disclosures are made.



The Daily Hour Host Jamel Hardman, Co-Host Mikaela Ian and Information Commissioner Gutierrez

For the first time, Information Commissioner Gutierrez delivered her International Right to Know Day Declaration virtually across the ICO's social media platforms. Her Declaration emphasised the important role of PATI rights in leveling the playing field between those who govern and those who are governed—by strengthening the public's ability to hold public decision makers accountable and encouraging transparent decision making.





ICIC WEBINARS

The ICO has participated in the public open sessions for the International Conference of Information Commissioners (ICIC) since 2015. These public sessions have provided an opportunity for the host country’s community members, advocates, journalists, government officials, academics and the Information Commissioners to engage on important access to information topics.

One benefit of the virtual conference format in 2021 was the opportunity for individuals in Bermuda to join the ICIC’s open sessions offered throughout the year and to view the recorded sessions on the ICIC’s YouTube channel. The ICO notified the public about upcoming topics such as *Transparency and Trust in Pandemic Times*, *Blurred Boundaries in Access to Information: Home Office and Public Records Management*, *Privacy and Transparency in Health Issues and Access to Information and Freedom of the Press*—and highlighted in subsequent ICO Monthly Roundups ways in which the discussions were relevant for Bermuda.

MONITORING PUBLIC AWARENESS

The ICO’s annual public awareness survey helps measure the effectiveness of its 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. Important highlights from this year’s survey include:



of the respondents believed the right of access to public records is important to them.



of the respondents believed 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 a virtual format, in line with public health guidelines. 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 and best practice recommendations. The 2021 topics were:

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

The basics of processing a PATI request – lessons from the ICO

Overview of the 2021 ICO Annual Return process

Exemption for deliberations of public authorities – section 29

85

participants from government departments, quangos, statutory boards and committees, and parish councils attended the Virtual Quarterly Briefings.

50+

different public authorities were represented.



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

ENFORCING THE RIGHT

1 JANUARY 2021 – 31 DECEMBER 2021

REVIEWS AND DECISIONS

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



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.

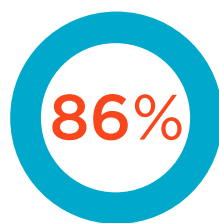


You can learn more about each of these stages in the *ICO Reviews Policy and Handbook*, available at ico.bm.

THE INFORMATION COMMISSIONER'S 2021 REVIEWS



39 new applications for Information Commissioner's independent review



86% increase from applications received in 2021 compared to 2020

THE INFORMATION COMMISSIONER'S TOTAL CASELOAD FOR 2021

On 1 January 2021, the ICO carried over 33 open reviews from previous years. This brought the ICO's total caseload in 2021 to 72 applications.

	2018	2019	2020	2021
CASELOAD				
Reviews brought forward from previous years	36	39	33	33
New applications	31	36	21	39
Total	67	75	54	72

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 have passed since then.

	2018	%	2019	%	2020	%	2021	%
PROPORTIONS OF NEW VALID APPLICATIONS								
Valid	21	75	34	94	19	90	35	90
Invalid	7	25	2	6	2	10	4	10
Total	28*		36		21		39	

*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 new cases involved a number of different exemptions at the validation stage, with the exemptions for personal information and related to law enforcement being cited most often.

	2018	2019	2020	2021
EXEMPTIONS CHALLENGED IN NEW CASES				
s.22 Health or safety	0	0	0	0
s.23 Personal information	2	1	1	5
s.25 Commercial information	1	2	0	2
s.26 Information received in confidence	3	5	2	3
s.27 Cabinet documents	2	0	0	0
s.28 Ministerial responsibility	1	1	1	0
s.29 Deliberations of public authorities	1	2	2	0
s.30 Operations of public authorities	0	1	1	1
s.31 Financial and economic interests	0	1	0	0
s.32 National security, defence and international relations	0	1	0	0
s.33 Governor's responsibilities	0	0	0	0
s.34 Law enforcement	4	1	2	5
s.35 Legal professional privilege	2	4	1	0
s.36 Parliamentary privilege	0	1	0	0
s.37 Disclosure prohibited by other legislation	2	2	2	1
s.38 Non-disclosure of existence of record	0	1	2	0
Total	18	23	12	17

Fewer administrative denials were challenged in the new 2021 applications received by the Information Commissioner, as compared to the number raised in 2020. This year, however, the ICO received a significant and concerning increase in the number of applications challenging public authorities' failure to respond to PATI requests, as compared to 2020. These reviews are discussed in more detail on page 26.



	2018	2019	2020	2021
ADMINISTRATIVE DENIALS AND OTHER ISSUES CHALLENGED IN NEW CASES				
s.4 Inapplicability of PATI Act	2	5	2	1
Failure to decide	9	13	4	14
s.16 Administrative denial	4	4	11	7
Fees charged	0	0	0	0
Reasonableness of search	6	3	3	5
Other (e.g., manner of access given, insufficient assistance provided, etc.)	1	1	1	2
Total	22	26	21	29

APPLICATION OUTCOMES

Of the 72 applications pending in 2021, the ICO closed 40%, or 29, of them. The Information Commissioner issued 22 decisions in 2021.

APPLICATIONS CLOSED IN EARLY STAGES

Applications for an independent review 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.

	2018	2019	2020	2021
REASON FOR CLOSURE IN EARLY STAGES				
Invalid	7	2	2	4
Early resolution	0	1	0	0
Abandoned/Withdrawn	3	1	0	0
Total	10	4	2	4

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.

	2018	2019	2020	2021
REASON FOR CLOSURE DURING INVESTIGATION				
Resolved	5	3	2	1
Abandoned/Withdrawn (other)	0	0	0	0
Total	5	3	2	1

INFORMATION COMMISSIONER'S 2021 DECISIONS

Of the 22 decisions issued, the Information Commissioner decided 14 of them for the applicant.

The remaining 8 decisions by the Information Commissioner upheld the public authority's decision in whole or in part.

	2018	2019	2020	2021
DECISION OUTCOMES				
For applicant	10	24	4	14
For public authority	0	6	8	3
Partially upheld	3	5	5	5
Total	13	35	17	22

JUDICIAL REVIEWS

In January 2021, the Supreme Court granted leave for a judicial review by the Attorney General to challenge two summonses issued by the Information Commissioner in a pending review involving the Ministry of Health Headquarters. The Supreme Court hearing was held on 8 December 2021 and the matter was pending as of the end of calendar year. Although outside the ICO's statistical reporting year ending on 31 December 2021, Puisne Judge Shade Subair Williams issued her decision, Attorney General v Information Commissioner [2022] SC (Bda) 6 Civ, on 25 January 2022. Judge Williams found that the Information Commissioner "has a right and duty to review any refusal of public access to records by a public authority" in accordance with the PATI Act" and that section 56(2) of the PATI Act "does not permit the IC to examine records which fall outside the scope of the application of the PATI Act". The Information Commissioner filed an appeal on 7 March 2022.

2021 DECISION HIGHLIGHTS

FAILURE TO DECIDE DECISIONS

The most notable trend in 2021 was the concerning increase in the number of decisions the Information Commissioner issued against public authorities for failing to issue an internal review decision. In these decisions, the Information Commissioner enforced a PATI requester's right to receive an internal review decision by the head of the authority when the requester disagreed with the initial response to the PATI request.

The internal review is a ‘fresh look’ at the public authority’s handling of the PATI request. The reasons for the failures to conduct the internal reviews ranged from a lack of resource capacity to technical failures with email communications to the failure to follow the procedures in the PATI Practice Code. A 250% increase in failure-to-decide decisions raises concerns about the capacity of public authorities to meet their PATI obligations. Most public authorities who failed to issue an internal review decision within the statutory deadline in 2021 were ‘experienced’ public authorities who have previously responded to requests in accordance with the requirements under the PATI Act. **A renewed adherence to the PATI Practice Code, attention to the basic requirements of the PATI Act and focused resources are needed to support public authorities’ compliance with the Act.**

IMPORTANCE OF PROCEDURAL ISSUES

A public authority’s response to a PATI request focuses on deciding whether the public should receive access to a record. In a number of decisions in 2021, the Information Commissioner provided guidance on the appropriate procedural steps public authorities should take to ensure efficiencies and fairness when meeting the PATI Act’s requirements. In Decisions 08/2021, Police Complaints Authority, and 10/2021, Department of Child and Family Services, the Information Commissioner discussed the requirements of a reasonable search for records that the PATI requester seeks. **Ensuring that a public authority locates the appropriate responsive records through a reasonable search is the foundation for properly responding to a PATI request.** In Decision 17/2021, Ministry of Education Headquarters, the Information Commissioner provided guidance on transferring a PATI request at the internal review stage—a scenario not contemplated under the PATI Act.

THIRD PARTY RIGHTS

The rights of third parties were the focus of several substantive decisions in 2021, offering insights into the PATI Act’s balancing of the public’s right to know against the private rights of others, including commercial third parties. In Decision 06/2021, Cabinet Office, the Information Commissioner highlighted the need for private entities who conduct business with public authorities to familiarise themselves with the PATI Act and the provisions related to third party rights. **Decision 06/2021 explained that the PATI Act balances the rights of private entities and their legitimate business interests and confidentiality expectations against the need for some level of transparency and public accountability around their transactions with public authorities.** The Information Commissioner also considered the balance between public access to individual’s personal information and an individual’s privacy rights in Decision 06/2021 as well as in Decision 08/2021, Police Complaints Authority, Decision 14/2021, Office of the Governor, and Decision 20/2021, Office of the Clerk of the Legislature.



All of the Information Commissioner’s decisions are published on the ICO website one week after issuance to the parties. The ICO also maintains a monthly dashboard on its website tracking the number of applications received and aggregate summary of their current disposition. Highlights and summaries of the decisions are also available in the ICO’s Monthly Roundups. Contact the ICO 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 name) readily available for the public

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.

2021 ICO ANNUAL RETURN

The ICO Annual Return enables the Information Commissioner to determine the status of a public authority's compliance with these requirements of the PATI Act. **With another year of challenges created by a global pandemic, the ICO Annual Return is an important reminder for public authorities that they must remain accountable to and accessible for the public.**

In 2021, restructurings of some public authorities slightly reduced the overall number of authorities subject to the ICO Annual Return process, from 201 public authorities in 2020 to 192 in 2021.

The Information Commissioner also expresses appreciation to the Bermuda Health Council for helpful discussions about how to reduce the administrative burden placed by the PATI Act on voluntary boards and committees. Through these discussions, the ICO adopted a more flexible approach for the submissions for 2021. In circumstances where voluntary boards received administrative support from government departments or paid quango employees, the professional staff completed the ICO Annual Return with the agreement of the chairperson of the board. In other situations, voluntary boards actively managed their own PATI responsibilities as part of their good governance practice and engagement with the public. This flexibility allowed boards and committees to adopt an approach appropriate for their structure.

The Information Commissioner is pleased to report that nearly all public authorities submitted their 2021 ICO Annual Return, although there was a slight percentage increase in those that did not, as compared to 2020.

ICO ANNUAL RETURN	2020		2021	
	# of Public Authorities	% of Total Number	# of Public Authorities	% of Total Number
Timely submissions	114	56.4	88	46
Late submissions	68	33.7	85	44
Failed to submit	7	3.5	13	7
Under review	13	6.4	6	3
Total	202		192	

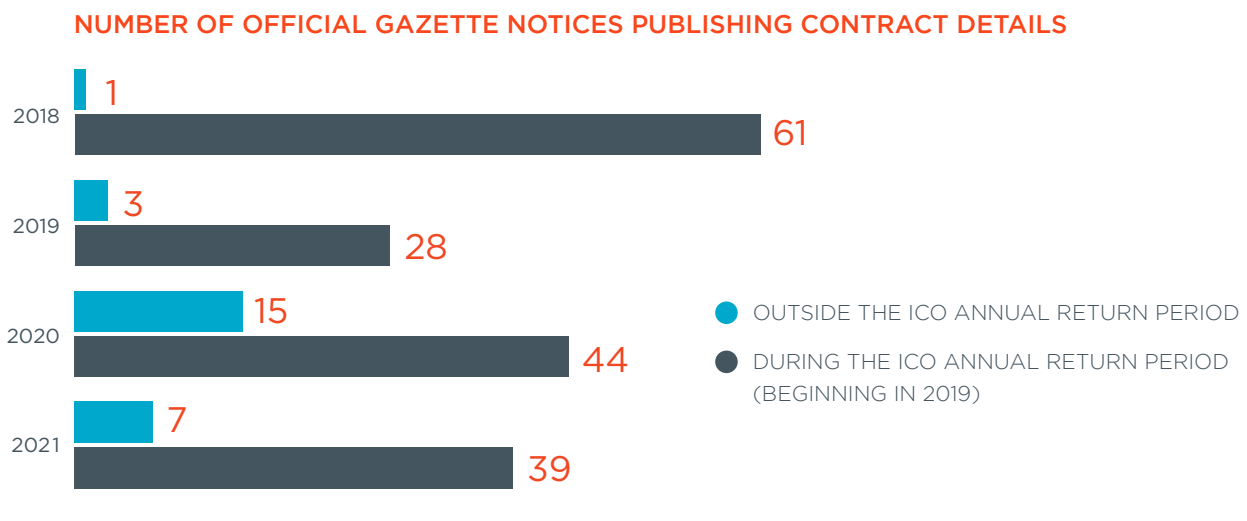
Noncompliance with the requirement in section 58(3) to report PATI statistics is addressed in the following section.

PUBLIC CONTRACTS

The requirement in section 6 of the PATI Act to publish an official Gazette Notice with the details of contracts for any goods or services with a total value of \$50,000 or more includes, but is not limited to, contracts for consultants and contractors, or for rent, IT services, repairs, construction and more. 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.

The Gazette Notices for contracts with a total value of \$50,000 inform the public about the vendor, what goods or services are provided, the total amount of the contract and the dates for the services or delivery of goods. The Gazette Notices offer Bermudians and residents an important tool, by strengthening their ability to hold public authorities accountable for decisions concerning public expenditures.

This budget year, the ICO Annual Return process commenced in November 2021 and ended in February 2022. During this period, public authorities gazetted 39 notices detailing contracts with a total value of \$50,000 or more. In comparison, only 7 Gazette Notices were issued before the 2021 ICO Annual Return process, between 1 March 2021 and 31 October 2021.



VOLUNTARY PUBLICATION — GOING THE EXTRA MILE

The PATI Act encourages public authorities to make information available to help the public learn about their work, services and decisions. In their 2021 ICO Annual Return, the following public authorities highlighted their efforts to promote public access to information through voluntary publication.



FINANCE, BUSINESS & ECONOMY

Department of Statistics | Publishes the following: monthly - Consumer Price Index and Retail Sales Index; quarterly - Quarterly GDP; every six months - Labour Force Survey; annually - Annual GDP, Tourism Satellite Accounts, Information and Communication Technology, Environmental Statistics Compendium, The Digest of Statistics, Employment Brief, Facts & Figures; and upon request - Population and Housing Census. In some instances, infographics are produced to supplement surveys.

Bermuda Business Development Agency | Publications are available at bda.bm/brochures-reports.

Bermuda Casino Gaming Commission | Published guidance notes on bdacasinogaming.com for a number of sectors it supervises. These guidance notes are produced to provide information to the public on the nature of the work done by the Commission.

Bermuda Economic Development Corporation | Published data and statistics for Covid-19 funding and support to businesses.

Economic Development Department | Publishes the IT Career Guide and Digital Citizenship Conference magazines in electronic format. The audience consists of students, parents, and educators. The Department also publishes editorials in local and international publications for which the audience is comprised of corporate C-Suite members and policy makers.

E-Commerce Advisory Board | Has its minutes available upon a visit to its office.

Bermuda Monetary Authority | Regularly publishes an Annual Report, a quarterly ILS Market Report, its Annual Business Plan, a Quarterly Banking Digest, an Insurance Digest, and a Regulatory Update. The Authority also regularly publishes discussion papers and consultation papers, for review and comment by the public on issues arising which may affect the manner in which it seeks to regulate licensed or registered entities or which may affect the overall financial health or direction of the economy in Bermuda. It also provides a variety of statistics and information, all which may be viewed for free 24 hours per day, seven days a week on bma.bm.



TRANSPORT

Ministry of Transport | Published Ministerial Statements, Budget Statements, press statements and press releases on Public Transportation (bus service), Marine & Ports Services (ferry service), 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.

Department of Public Transportation | Publishes bus cancellations on gov.bm and sends emails to anyone subscribed to the bus alerts notification. When the cashier's kiosk at Central Terminal closes early due to staffing shortages, the closures are published to all media outlets through the Department of Communications. Temporary route changes to avoid trench work on the roads are also published to all media outlets through the Department of Communications.



EDUCATION

Ministry of Education (MOE) and Department of Education (DOE) | To increase the information released to the public, each public school and DOE section is represented on moed.bm. Important documents and updates about the happenings at schools may be found on each school's webpage, e.g., information about the school song, school rules and weekly class tasks.

Since the pandemic, the Bermuda Public Schools' use of their Facebook page (facebook.com/BermudaPublicSchools) and YouTube channel has increased. Both social media outlets have kept parents and other stakeholders abreast of happenings and upcoming events.

The DOE and its Communications Manager have increased internal and external communication by introducing:

- *The Scoop* - a newsletter for Bermuda Public Schools families from the Office of the Commissioner of Education
- Instagram (instagram.com/BdaPublicSchools)

The DOE maintains the objective of being more transparent and to reduce or eliminate the need for PATI requests.



HEALTH

Department of Health | Routinely publishes a variety of information, including:

- Seawater Sampling Results – the Department routinely samples and tests seawater from Bermuda’s beaches to assure bathing water quality and published these results at gov.bm/seawater-monitoring-programme-bathing-beaches
- Registered Child Care Providers and Licensed Day Care Centres Database – this list gives the names of registered day cares and licensed child care providers, with their address, other contacts, and certificate or licence number; see gov.bm/child-care-information-parents
- Grades on Food Establishment Licences – this is the Environmental Health Section’s hygiene and safety scoring programme that displays the results of food premises’ annual inspections in letter grade format – A, B, C or D on their food licence. The grades for food establishments are published at gov.bm/grades-food-establishment-licences

Bermuda Health Council | Publishes:

- Behind the Scenes (bhec.bm/behind-the-scenes), which provides a high level summary of achievements, meetings and other information about staff work and activities
- Reports on health system trends (bhec.bm > Research & Reports): annual publications such as National Health Accounts Report and Actuarial Reports, and ad hoc reports such as the 2017 Analysis of Health Insurance Claims for Road Traffic Crashes
- Fact Sheets (bhec.bm/fact-sheets): quick and simplified information about health system updates (such as details about and changes in the Standard Premium Rate) or brief research summaries on potential system changes
- Data Briefs (bhec.bm/data-briefs): summary of data requests and analysis
- Data Tables (bhec.bm/data-tables): quick access to key data tables
- Health Professional Registers (bhec.bm > Health Professionals)
- Health Facility Register (bhec.bm > Health Facilities)
- Employers’ Compliance information and list of non-compliant employers (bhec.bm > Employers’ Compliance)
- Governance documents, Board and Secretariat information (bhec.bm/about-us)

- The Bermuda Health Plan Consultations (bhec.bm/bermuda-health-plan-2020-consultation): summary of consultation meetings and access to community discussion notes
- Telehealth Guide (bhec.bm/telehealth-guide)

All this information and more can be found on the Bermuda Health Council’s website, bhec.bm.



GOOD GOVERNANCE

Bermuda Public Accountability Board | Publishes information on its website, bpab.bm.

The Human Rights Commission | Publishes an Annual Report that serves as a valuable public resource detailing events, statistics, issues and legislative developments during the respective year. The Commission’s website houses the Annual Report, Information statement and related documents, and updates reflecting on the Commission’s developments and those across the broader human rights landscape. As the Commission progresses its communications strategy, it will offer broader outreach to promote education and awareness in support of its work.

Office of the Ombudsman | Provided its Annual Report 2020 to media outlets, public library and Bermuda College, and published the report on its website, ombudsman.bm. The Office also published media releases when it submitted investigation reports on criminal injuries compensation and bus service communications to the Speaker’s Chambers for tabling in the House of Assembly.

Office of the Auditor General | Publishes on its website, oagbermuda.bm, a listing of all clients, with the last accounts audited for each entity and the audits currently in progress as a way of keeping the public and other stakeholders informed of its audit status. The Office’s annual, performance, and public interest reports are available on its website for review.

Office of the Clerk to the Legislature | Publishes Order Papers for all meetings of the House of Assembly and the Senate on the Parliament website, parliament.bm. In addition to radio broadcasting, live audio streaming of the proceedings in both the House and the Senate are accessible on the Parliament website. Copies of all public legislation, as well as reports and other documents tabled in the House and the Senate, are accessible on the website. The Office also publishes a listing of all Parliamentary Committee meeting dates and times, which is periodically updated and available on the website, whether these may be public hearings or in camera meetings.



PUBLIC SAFETY

Bermuda Police Service | Continues to publish its policies on its website, bps.bm.

Police Complaints Authority | Publishes information about itself and its work on its website, pca.bm.

Royal Bermuda Regiment | Issues regular press releases on the Coast Guard, Bi-Annual Recruit Camps, COVID Operations, promotions, and recruiting efforts as well as publishes regular updates of information on its website, rbr.bm, and social media.

Treatment of Offenders Board | Produces an Annual Report each March that it sends to the Minister for publication.



COURTS & TRIBUNALS

Criminal Injuries Compensation Board | Tables an Annual Report with regard to its awards.

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 Report is published at gov.bm/department/judiciary; currently online are its Annual Reports from 2014 to date. The Judiciary also publishes the considered judgments of the Supreme Court and Court of Appeal on its webpage, as well as all Practice Directions issued within any given year, which details departmental business.

Financial Intelligence Agency | Publishes on its website, fia.bm: consultation papers, statistics, all relevant legislation, Information Bulletins, policies and procedures, audited financial statements, Annual Reports, case studies and typologies.



COMMUNITY & ENVIRONMENT

Bermuda Post Office | Regularly releases press statements regarding activities and service disruption that affect the community. Information is published via media outlets, Government news and the Bermuda Post Office's website, bermudapost.bm.

Stamp Design Advisory Committee | In partnership with the Bermuda Post Office, regularly publishes information regarding stamp release via media outlets, Government news and the Bermuda Post Office's website, bermudapost.bm.

Bermuda Land Development Company Limited | Publishes information about its ongoing projects and tender information.

Corporation of Hamilton | Includes the following information on its website, cityofhamilton.bm: all meeting agendas and meeting minutes, Audited Financial Statements and Annual Budget reports. Any invitations to tender are posted on the website and on various social media outlets.

Department of Public Lands and Buildings | Publishes public tenders for various leases and lettings on Government properties when available. They are advertised in the press and the Government procurement section on gov.bm.

2021 INFORMATION COMMISSIONER'S AWARD FOR OUTSTANDING INFORMATION OFFICERS

This was the third year the Information Commissioner's Award for Information Officers was presented for outstanding service as an Information Officer in the areas of Communication, Innovation, Leadership and Service. The Information Commissioner's Award recognises individuals for their hard work and dedication in support of public access to information.

Two Information Officers received the 2021 Information Commissioner's Award: Mr. Shaun Dill, Office of the Ombudsman and Sergeant Travis Powell, Bermuda Police Service.

This year's award recipients exemplify the best qualities of Information Officers who are diligently serving the public. In addition to working well with PATI requesters, they are also encouraging their organisations and colleagues to understand the PATI Act and implement it as effectively as possible. The Information Commissioner celebrated their courage and contributions to good governance and public access to information in Bermuda.



*Shaun Dill,
Information
Officer for the
Office of the
Ombudsman*

*Sergeant
Travis Powell,
Information
Officer for
the Bermuda
Police Service*





2021 PUBLIC AUTHORITIES' STATISTICS

1 JANUARY 2021 - 31 DECEMBER 2021

Section 58(3) of the PATI Act requires 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.

2021 PUBLIC AUTHORITIES' STATISTICS	Number of Public Authorities	Percentage of Total Number
Received PATI requests	38	19.8
Did not receive any PATI requests	135	70
No statistical information provided	13	6.7
Under review	6	3.1
Total	192	

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 thirteen public authorities below that they would be listed in the 2021 Information Commissioner's

Annual Report as noncompliant with section 58(3) of the PATI Act and the submission of a 2021 ICO Annual Return:

Board of Trustees of the Golf Courses	Pembroke Parish Council
Contributory Pensions Appeals Tribunal	Smiths Parish Council
Department of Corrections*	Southampton Parish Council
Hamilton Parish Council*	St George's Preparatory School Board of Trustees
Ministry of Labour Headquarters*	Trustees
Ministry of Social Development & Seniors Headquarters*	Department of Workforce Development
National Training Board	Whitney Institute Board of Trustees**

*The public authority also failed to comply with section 58(3) of the PATI Act in 2020.

** The public authority also failed to comply with section 58(3) of the PATI Act in 2020 and 2019.

2021 PATI REQUESTS

Public authorities reported that individuals made 137 new PATI requests for access to records under section 13 of the PATI Act. Another 14 PATI requests for records were reported as pending at the end of 2020 and were carried over to 2021. The public authorities with the highest number of new 2021 requests reported to the ICO were the Bermuda Police Service (61 requests) and the Cabinet Office (8 requests). The Ministry with the highest number of reported requests for only government departments was the Ministry for the Cabinet Office, with 18 requests received by its various departments, followed by the Ministry for Home Affairs (15 requests).

	2018	2019	2020	2021
TOTAL PATI REQUESTS				
Reported new requests	133	91	116	135
Reported requests carried over from prior year	10	9	8	14
Total requests in processing for year	143	100	124	149

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

	2018	2019	2020	2021
INITIAL DISPOSITION OF PATI REQUESTS (AS AT YEAR END)				
Pending	6	8	10	9
Access granted in whole	59	31	31	33
Access granted in part	22	22	29	39
Access refused in whole	49	27	39	56
Unknown	7	12	15	12

In 2021, 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 2021, the most commonly invoked exemptions were for personal information (section 23) and law enforcement (section 34). The most frequently cited administrative ground for refusal was because the records did not exist or could not be found (section 16(1)(a)).

		2018	2019	2020	2021
REASONS FOR REFUSAL IN INITIAL DECISION					
s.4	Record not within scope of PATI Act	2	6	0	2
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	30	11	15	25
s.16(1)(b)	Administrative refusal because insufficient information in request	4	0	6	1
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	2	2	3	5
s.16(1)(d)	Administrative refusal because publication of information is required by law within 3 months	0	1	0	0
s.16(1)(e)	Administrative refusal for vexatious request	2	0	3	1
s.16(1)(f)	Administrative refusal because information is already in public domain	2	6	7	11
s.16(1)(g)	Administrative refusal because fee payable under section 20 not paid	2	3	0	0
s.22	Health or safety	0	0	1	3
s.23	Personal information	9	9	13	27
s.25	Commercial information	11	4	3	2
s.26	Information received in confidence	3	6	6	8
s.26A	International tax agreements	0	0	1	0
s.27	Cabinet documents	2	0	0	0
s.28	Ministerial responsibility	0	0	2	3
s.29	Deliberations of public authorities	2	0	4	5
s.30	Operations of public authorities	3	6	11	6
s.31	Financial and economic interests	1	0	0	0
s.32	National security, defence and international relations	0	1	0	1
s.33	Governor's responsibilities	1	0	0	0
s.34	Law enforcement	4	5	6	11
s.35	Legal professional privilege	5	3	4	3
s.36	Contempt of court and parliamentary privilege	0	2	0	0
s.37	Disclosure prohibited by other legislation	9	2	5	3
s.38	Non-disclosure of existence of a record	1	3	3	0
	Failure to decide	1	3	6	9

Public authorities also reported that individuals sought internal reviews 31 times in 2021. The majority of the internal review decisions denied access to the records, as shown below.

	2018	2019	2020	2021
DISPOSITIONS OF INTERNAL REVIEWS				
Pending	3	3	0	2
Grant access in whole	1	1	2	5
Grant access in part	1	5	12	8
Refuse in whole*	12	6	6	13
Procedural issues**	0	2	0	0
Referred to Commissioner	0	0	1	3
Total reported internal review decisions	17	17	21	31

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

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

The reasons invoked by public authorities in 2021 to refuse PATI requests at the internal review stage are captured in the following table:

		2018	2019	2020	2021
REASON FOR REFUSAL IN INTERNAL REVIEW DECISION					
s.4	Records not within scope of PATI Act	1	4	0	0
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	1	2	4	5
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	0	0	2	0
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)	Vexatious request	1	0	0	0
s.16(1)(f)	Administrative refusal because information is already in public domain	0	3	1	0
s.23	Personal information	1	2	1	3
s.25	Commercial information	1	1	0	3
s.26	Information received in confidence	1	4	1	2
s.27	Cabinet documents	1	1	0	0
s.28	Ministerial responsibility	1	0	1	1
s.29	Deliberations of public authorities	1	0	2	0
s.30	Operations of public authorities	0	1	1	0
s.32	National security, defence and international relations	0	0	0	0
s.33	Governor's responsibilities	1	0	0	0
s.34	Law enforcement	4	1	2	7
s.35	Legal professional privilege	2	2	2	0
s.36	Contempt of court and parliamentary privilege	0	1	0	0
s.37	Disclosure prohibited by other legislation	0	0	1	0
s.38	Non-disclosure of existence of a record	0	1	0	0
	Failure to decide	0	0	0	6
	Request for internal review out of time	0	0	0	0



IMPROVING ACCESS TO INFORMATION

AMENDMENTS TO THE PATI ACT

In the 2021 Throne Speech the Government opined that:

Bermuda has a robust public sector governance framework. However, the Public Access to Information Act is over a decade old and is in need of review. During this Session, the Government will introduce amendments to the Public Access to Information Act to centralise the processing of requests for information. This will create greater uniformity in the management of requests and relieve public officers of the task of handling more complex requests for information, so that they can focus on their key job tasks.

To date, amendments to the PATI Act have not yet been tabled. The Information Commissioner continues to urge the Government and all PATI stakeholders to recognise, consider and encourage public engagement with her recommendations for legislative reform. **Amendments to the PATI Act must balance the needs of public authorities alongside the rights of Bermudians and residents to understand more about public decision making, spending and services.** The Information Commissioner's recommendations are outlined in her March 2021 *Report and Recommendations on the Implementation of the PATI Act*, and remain relevant to further improvements on the administration of the PATI Act.

IMPROVING ADMINISTRATIVE PRACTICE - USING THE PATI PRACTICE CODE

While legislative reform can strengthen the rights under the PATI Act, public authorities can—and should—immediately take steps to improve their administrative handling of PATI requests using resources that are already available through the Cabinet Office and the ICO. **In the face of budget constraints and resource limitations, public authorities can still make gains by learning and applying the PATI Practice Code.**

The PATI Practice Code “serves as a practical guide to achieving the standards required by the Act and the Regulations”. For heads of public authorities, organisational leadership and Information Officers, the PATI Practice Code offers a useful pathway to achieving efficient and effective

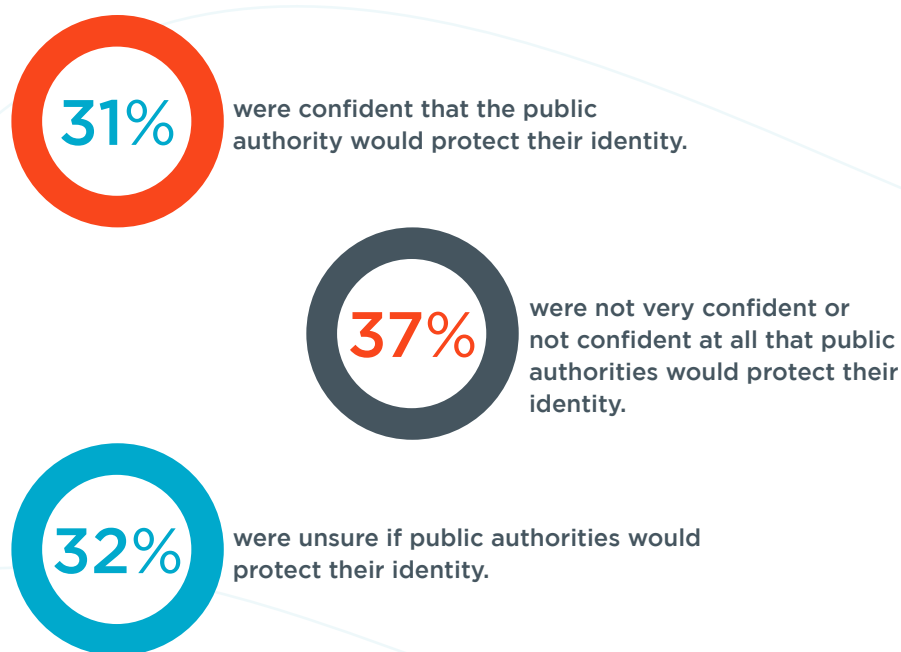
processing of PATI requests. It offers systematic procedures, along with helpful templates, to support those involved in PATI-related work within Bermuda's public authorities. The Cabinet Office's PATI/PIPA Unit's regular training on the PATI Practice Code amplifies its usefulness.

SIMPLIFY THE PATI REQUEST PROCESS AND ENABLE ANONYMOUS REQUESTS

Over the years, the Information Commissioner has consistently advocated for immediate amendments to the PATI Act and Regulations to allow for anonymous PATI requests. This year, for the first time, the ICO measured public confidence in the ability of public authorities to safeguard the identities of PATI requesters, as required by the PATI Act. The ICO's annual public awareness survey conducted in February 2022 measured individuals' confidence that, if they made a PATI request, a public authority would protect their identity as a PATI requester.

The results of the survey confirm that after seven years of the PATI Act being in effect, Bermudians and residents continue to have concerns and uncertainty about the ability of public authorities to maintain the confidentiality owed to a PATI requester. This uncertainty undermines the rights afforded by the PATI Act. Enabling anonymous requests, especially within Bermuda's small community, will strengthen public trust and confidence when Bermudians and residents exercise their rights to make a PATI request.

If individuals were to make a PATI request . . .



PUBLISH AN ADMINISTRATIVE CODE OF PRACTICE ON RECORDS MANAGEMENT

The Minister should develop a records management code of practice to facilitate ready access to public records, as required by section 60(2) of the PATI Act:

The Minister shall, in consultation with the Commissioner and the Director of the Department of Archives, establish codes of practice for public authorities regarding the maintenance and management of records of public authorities in a manner that facilitates ready access to the records.

An efficient and uniformly applied records management policy across all public authorities is long overdue. The Records Management Code of Practice as well as appropriate training and adequate resources will facilitate an opportunity for increased efficiency in government performance overall, as indicated in the 2019 *Government Reform Plan*. **When available and readily applied across public authorities, a standardised framework for public records management will enable the administration of the PATI Act to run more smoothly.** The importance of the Administrative Code on Practice on Records Management is addressed in more detail in the Information Commissioner's *Report and Recommendations on the Implementation of the PATI Act*.



STRENGTHENING THE ORGANISATION

Throughout the year, the ICO sought to sustain its growth and operations as a small and nimble oversight body. The ICO's adaptability, international relationships and existing resources enabled the organisation to progress throughout 2021.

TRAINING AND STAFF DEVELOPMENT

In light of ongoing budgetary constraints, the ICO supported the professional development of its officers primarily through workshops on various access to information topics offered by the International Conference of Information Commissioners (ICIC) and on-the-job training within the ICO. The ICIC workshops helped the ICO officers expand their perspective on access to information in other jurisdictions and gain insights on how to more effectively promote and enforce Bermuda's PATI Act. Retired Senior Investigator with the Office of the Information Commissioner for Ireland, Ms. Elizabeth Dolan, returned (virtually) to work with the ICO's Investigation Officers, after visiting the ICO in 2018. She provided one-on-one guidance.







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

INTERNATIONAL RELATIONSHIPS

Information Commissioner Gitanjali Gutierrez was elected to the first Executive Committee for the ICIC for a three-year term commencing in June 2021. Information Commissioner Gutierrez previously joined her colleagues to adopt the ICIC Charter in March 2019 in Johannesburg, South Africa. Since that time, Information Commissioner Gutierrez has served on the ICIC's Governance Working Group to establish the working framework of the ICIC.

The ICIC is the only permanent international network that connects member Information Commissioners to collectively protect and promote access to public information as a fundamental pillar to social, economic and democratic governance globally. The ICIC's mission is to "share knowledge and best practices, to build capacity, to help identify what is needed for global progress and to act as a collective voice in international fora with a view towards improving people's right to public information and their ability to hold to account bodies that provide public functions".

The members of the first ICIC Executive Committee are:

	Mexico, Chair	National Institute for Transparency, Access to Information and Personal Data Protection of Mexico
	Albania	Information and Data Protection Commissioner
	Bermuda	Office of the Information Commissioner
	Brazil	Office of the Comptroller General (ICIC Annual Conference Host 2021)
	Chile	Chilean Transparency Council
	Kenya	Commission on Administrative Justice, Office of the Ombudsman
	South Africa	Information Regulator (South Africa)
	United States	The Office of Government Information Services

Through membership on the Executive Committee, Information Commissioner Gutierrez and the ICO officers will continue to benefit from valuable international relationships for sharing information, building capacity and deepening knowledge. In turn, these interactions enable the ICO to continually strengthen its oversight and promotion of PATI rights for Bermudians and residents.

It also ensures that Bermuda's ICO is at the international decision making table with its colleagues. The ICO has an opportunity to contribute insights as an oversight body in a smaller jurisdiction, ensuring that the ICIC's work benefits Information Commissioners from a diversity of jurisdictions.



Information Commissioner Gutierrez and colleagues at the First Ordinary Session of the ICIC Executive Committee, 17 February 2022

FINANCES

The ICO proactively publishes details of its financial decisions and public expenditures. Its budget estimate for the fiscal year ending 31 March 2022 was \$1,029,847. 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

With its robust use by Bermudians and residents since 2015, the PATI Act's strengths are clear. Public access to information has empowered Bermudians and residents to dive below the surface for a deeper understanding of public decision making, spending and services. Through this process, the public has discovered a world of information about spending projects, public-private partnerships, government contracts, community health, meeting minutes, policy development and more.

As Bermudians and residents use their rights under the PATI Act, public authorities have developed PATI-specific tools and resources to navigate the requirements and intricacies of the legislation. This includes the Practice Code on the Administration of the Act, training for Information Officers by the PATI/PIPA Unit within the Cabinet Office and PATI request management tools.

With sound leadership and a commitment to good governance, a solid foundation is in place for the successful administration of the PATI Act and fulfillment of the rights of Bermudians and residents.

Against this background, the Government has announced its intention to introduce amendments to the PATI Act. As Information Commissioner, I encourage the Government to jump into this process with a continued faith in Bermudians and residents. The rights under the PATI Act empower the public to promote accountability. PATI rights ensure that Bermudians and residents not only receive the information that public authorities voluntarily choose to provide, but also the information that the public asks for and wants to know. This process ensures that Bermudians and residents are informed stakeholders for the many important decisions ahead. Any potential amendments should strengthen PATI rights which, in turn, strengthens the capacity of Bermudians and residents to engage meaningfully with those that govern.

GITANJALI S. GUTIERREZ
INFORMATION COMMISSIONER

“As Information Commissioner, I encourage the Government to jump into this process with a continued faith in Bermudians and residents. The rights under the PATI Act empower the public to promote accountability... Any potential amendments should strengthen PATI rights which, in turn, strengthens the capacity of Bermudians and residents to engage meaningfully with those that govern.”

Information Commissioner Gitanjali Gutierrez

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