

MONTHLY ROUNDUP

Volume V, Issue IV

JUNE/ JULY 2022

WELCOME

The Information Commissioner's Office (ICO) welcomes you to the latest 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 decision and resolved case.

We are excited to announce the redesign of our website, which is now live at ico.bm. This initiative further supports the work of the ICO to continually improve public access to information in Bermuda. In this issue we also highlight the ICO's recent participation at the 13th Edition of the International Conference of Information Commissioners (ICIC). The ICO's ongoing involvement with the ICIC not only builds our team's capacity and skills, but allows the ICO to improve its ability to model best practices for public access to information in Bermuda and improve our oversight role.

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“Access to information is a democratic tool that allows citizens to hold their State and public administrations accountable for the decisions taken and activities carried out by them, in such a way that participation, governmental integrity and the formulation of public policies can be strengthened.”

Public Statement,
13th Edition of the
International
Conference of
Information
Commissioners



DECISIONS ISSUED

During June and July 2022, the Information Commissioner received five new applications, issued one decision and resolved one case. Highlights are below:

Public authorities' failure to meet basic PATI obligations continues.

In [Decision 17/2022](#), the Applicant submitted a PATI request to the Customs Department seeking customs duty figures related to vector control products. The Information Commissioner found that the Customs Department did not issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act. Since the Customs Department issued the internal review decision during the Information Commissioner's independent review, no further action was needed.



This Decision further clarifies the scope of an internal review and a requester's right of review on cases where, by the time an internal review request is made, an initial decision has not been issued. If a public authority finds itself in a situation such as this, it is important to communicate with the requester, especially informing them of the PATI process. Requesters are entitled to a timely response from whomever is responsible for making the decision - whether it is a decision from the information officer at the initial decision stage or the head of authority at the internal review stage. Public authorities should inform requesters of that PATI timeframes attached to each stage of their request, and public authorities should respect these timelines to avoid putting the requesters' rights at risk.

When a PATI request progresses from initial decision to internal review, the decision maker changes from the information officer to the head of authority. Knowing this is important because a response issued by the wrong decision maker may impact the requester's right to a timely decision. However, nothing in the PATI Act prevents the head of authority from asking the information officer to provide them with a draft proposal or recommendation on whether to grant access to the requested records for consideration when the head of authority is making their decision.

Can the PATI Act improve relationships between public authorities and advocates? Yes! Read more about a resolution process that benefitted both parties.

Beyond promoting public accountability and transparency, the PATI Act is a tool that can support collaboration between public authorities and those involved in community work. This month, the Information Commissioner resolved a case that followed on from a prior 'failure-to-decide' application (see [Decision 07/2019](#)), about a PATI request submitted to the Department of Corrections (Department) seeking sex offender treatment information.

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DECISIONS ISSUED...cont.

Given the Department’s continued willingness to release the information requested, the ICO’s focus was to facilitate the Applicant receiving the Department’s substantive response which was outstanding at the time of the internal review decision.



During this early resolution process, after the Department had sent its additional response to the Applicant, the ICO hosted a videocall for the Applicant and the public authority to speak directly. The Applicant learned that, as a result of their PATI request, the Department re-considered its practices on where and how certain programme information was stored. Learning from the process of compiling the data sought by the Applicant, the Department put in place some record-keeping improvements. The Department also gained new insights when looking at what the data, once compiled, actually revealed about sex offender treatment participation and outcomes. This prompted the Department’s closer attention to a different piece of the puzzle for sex offender treatment, requiring collaboration with other parts of the justice system.

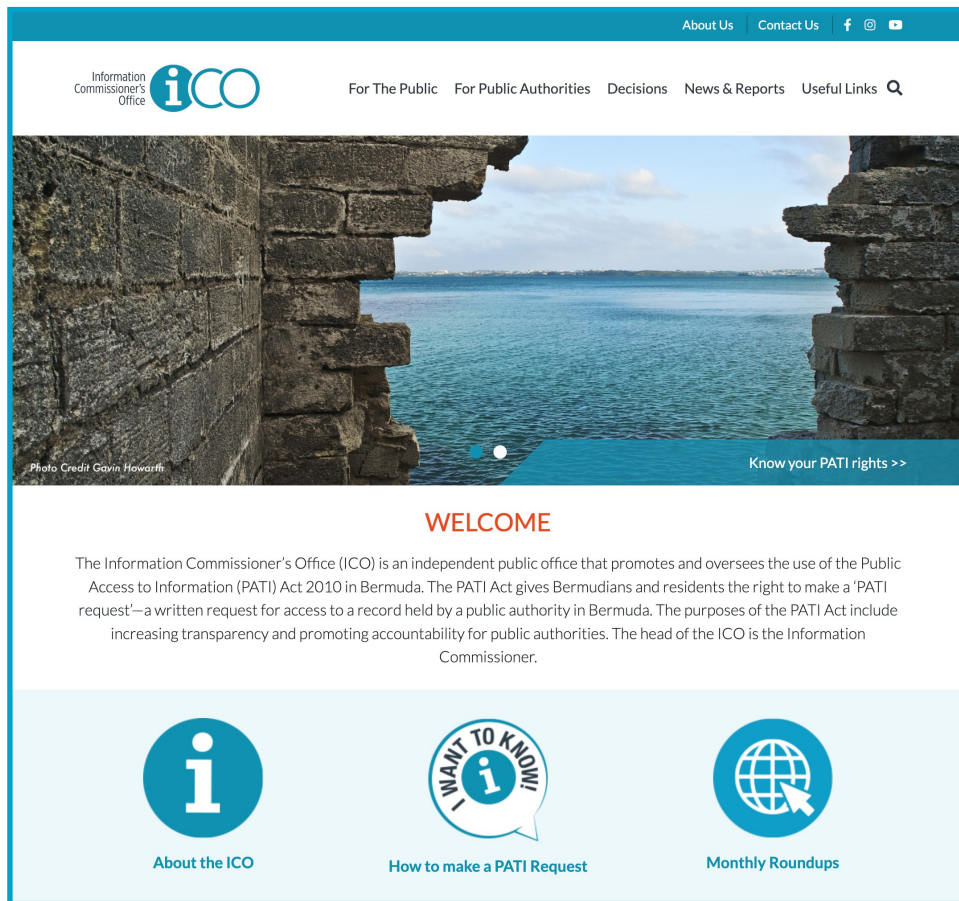
Ultimately, the Information Commissioner was satisfied that the early resolution was successful and accepted the Applicant’s withdrawal of their application. Putting the PATI Act into action and the ICO’s facilitation during the resolution helped to create the opportunity for a more meaningful, direct engagement for these parties. Through the resolution process, important purposes of the PATI Act were furthered—supporting the ongoing relationship between the authority and the Applicant as a community activist. Although formal decisions can promote accountability and keep the public informed, this is not the only effective approach available under the PATI Act. The resolution process in this case led to valued outcomes under the PATI Act.

ICO STATISTICS AS OF 31 JULY 2022

(from 1 April 2015)

Total applications for independent review by the Information Commissioner238	Closed: Decided 115
Pending investigations64	Closed: Resolved25
Applications pending validation1	Closed: Abandoned7
	Closed: Invalid 26

REDESIGNED ICO WEBSITE MODELS 'TRANSPARENCY BY DESIGN'



The ICO's redesigned website was launched on 15 July 2022. Enhancements include better search functionalities within the decisions and public authorities' listings. It also includes a specific webpage on how to make a PATI request, in a more accessible format for the public.

The redesigned website models transparency by design by making additional documents publicly available that shed light on the ICO's management of public funds and its work. The website now includes the:

- ICO's PATI disclosure log (without requesters' identities),
- Meeting minutes from ICO staff meetings,
- Information Commissioner's business credit card statements,
- Unaudited quarterly expenditure reports,
- ICO salary scales, and
- Other finance, governance and administrative records.

A copy of the press release announcing the redesign is available [HERE](#).

ICO ATTENDS 13TH INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS



Information Commissioner Gitanjali Gutierrez and Investigation Officer Answer Styannes attended the 13th annual conference of the International Conference of Information Commissioners (ICIC), hosted by the Mexican National Institute for Transparency, Access to Information and Personal Data Protection, in Puebla City, Mexico from 22-24 June 2022. The conference theme was *Access to information, participation and inclusion in the digital age* and involved two days of public sessions followed by a one-day closed meeting for Commissioners.



Commissioner Gutierrez was a panel rapporteur for a panel on *Artificial intelligence (AI) and algorithm governance in the digital age*. The session discussed the increasing use of algorithms, or machine decision-making, within the public sector, particularly since the global pandemic. She commented on the potential for AI to make access to information processes more efficient, as well as the need for accountability for the use of AI in public decision-making and service-delivery. The panel highlighted the need for more data to develop best practice guidelines to reduce risks, such as bias in algorithms, which can arise during an algorithm's creation or implementation.



Commissioner Gutierrez and Ms. Styannes also attended sessions on transparency by design, capacity building, developing regional ICO networks, improving access for vulnerable groups, anti-corruption efforts, and freedom of the press. In a ceremony on 23 June 2022, Commissioner Gutierrez and other members of the ICIC Executive Committee were recognised as Distinguished Guests of the City of Puebla, a historical event marking first such recognition of the ICIC leadership.

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ICO ATTENDS 13TH INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS...cont.

The [Public Statement](#) from the 13th Edition of the ICIC was issued following the conference, with the Bermuda ICO as one of the 32 signatories. Focusing on the conference theme and current issues related to public access to information, the statement included the following:

[We] will seek to encourage international institutions, national governments, and other public bodies to develop proactive transparency systems that take advantage of the progress of information and communication technologies to encourage better access to information by citizens, with special provisions put in place where necessary for vulnerable population. Likewise, we must continue the strengthening of democratic institutions, as a community. The professionalization of the staff of guarantor bodies must be promoted, so that they can provide equal service and assistance to members of vulnerable groups.

The full statement is available on the ICIC website, informationcommissioners.org.

The involvement with the ICIC supports the continued improvement of the ICO. One recent example is the ICO's redesigned website that reflects the ICIC's promotion of 'transparency by design'. Bermudians and residents now have ready access to information about the ICO's management of public money and administration, without the need for a PATI request and consistent with international best practices.



Q&A CORNER WITH THE ICO



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

I Want to Know about confirming my identity as a requester...

Q I am not on island but wish to make a PATI request. Do I need to appear in person for the information officer to confirm my identity?

A The PATI Act does not require a requester to go in-person to the public authority so their identity can be confirmed. A public authority might put this procedure in place. What the PATI Act requires is that the requester be a Bermudian or current resident of Bermuda.

The ICO's general approach is that proof of ID should be asked for when the requester seeks personal information and only if there is doubt that the requester is a Bermudian or resident. The Minister's PATI Practice Code states that an information officer must be *satisfied* that the requester is a Bermudian or a resident.

If the requester is someone the information officer knows to be Bermudian or a resident (e.g. a public figure or repeat requester), such awareness is sufficient without the requester officially presenting their ID. As needed, the requester can show a government-issued photo identification and suggest a videocall, so the information officer may be satisfied of their identity. To confirm residency, the requester can show a recent local bill in their name.

As long as the information officer is satisfied that the requester's identification is valid, processing the PATI request should proceed. The 6-week timeline begins when the PATI request is made, not after proof of ID is checked. Additionally, no matter who the requester is, their identity should be kept confidential.

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Q&A CORNER WITH THE ICO . . . cont.

I Want to Know about my rights...

Q What options does a person have if access to their own personal information was denied?

A By submitting your request as an official PATI request, you activate your rights under the PATI Act and you begin to allow the PATI Act to work for you.

Once a public authority receives your request for records in writing, the public authority must acknowledge your request and explain the PATI process within five working days. The information officer has six weeks to consider your request and issue you an initial decision on whether access to the records is granted or denied; you have the right to receive this initial decision within the six-week timeline. If access is denied, the public authority must tell you the reasons under the PATI Act that justify the refusal. If you are not satisfied with the initial decision that you received from the information officer, you have the right under the PATI Act to request an internal review from the head of authority. If you are not satisfied with the internal review decision that you received, you have the right to request an independent review from the Information Commissioner of how your PATI request was handled.



Information Commissioner's Virtual Quarterly Briefing

Thursday, 15 September 2022, 10:00am - 11:00am

Topic: *TBC*

ICO Briefings are for public authorities only.

Registration details will be sent directly to public authorities.

RIGHT TO KNOW WEEK 2022

Monday 26 September - Friday 30 September

International Right to Know Day

Wednesday 28 September

TIPS CORNER FOR PUBLIC AUTHORITIES & REQUESTERS



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

Tip for Information Officers: When a requester asks for an internal review for their PATI request, consider sending an acknowledgement within five days. Though not required under the PATI Act for an internal review, it is a good administrative practice which aligns with the public authority's duty under section 13(4) (to acknowledge a PATI request on receipt).

Why it makes sense?

Establishing good communication and setting clear expectations upfront protects the requester's rights under the PATI Act and facilitates the review process. Though you must take care to accurately describe the PATI process and the requester's rights of review as they apply once at internal review.

In this sense, remember that the PATI Practice Code's 'sample letter I' is only relevant for informing the requester of the process and their rights during initial decision. It is not appropriate for the internal review stage because the two procedures are different. For instance, during an internal review, no extension of the six-week time frame is available. A public authority's option to extend the original period under section 15 applies only at initial decision, such language does not belong in an acknowledgement at the internal review stage.

Having PATI procedures in place for your public authority, including template language, can help take the potential stress out of navigating the PATI process. Ensure you and your officers are aware of all the available PATI resources: the Cabinet Office's PATI/PIPA team, [the Minister's PATI Practice Code](#), and the ICO's guidances on ico.bm (e.g. our latest '**Guidelines for Responding to PATI Requests**').

Kudos to those Heads of Authority who initiate useful practices even when not expressly required by the PATI Act and Regulations.

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TIPS CORNER FOR PUBLIC AUTHORITIES & REQUESTERS...cont.

Tip for requesters and third parties: If you want to ask for an internal review (of an initial decision you received or if you never received one), copy in the public authority's designated information officer when you email the head of the public authority.

Why it makes sense?

The Schedule to the PATI Act identifies the correct head of the public authority. If you email someone you believe is the head of the public authority, but that person actually has no responsibility under the PATI Act for the public authority handling the PATI request, then your right of review is at risk. Copying the information officer is an easy step and ensures that your request for an internal review is received by the public authority—and directed to the correct person.

As the requester or third party seeking an internal review, it is your responsibility under the PATI Act to notify the correct public authority of your request. The law does not require you to contact the head of the public authority directly.

Kudos to those requesters and third parties who took simple steps to ensure their correspondence is received by public authority.