

MONTHLY ROUNDUP

Volume V, Issue V

AUGUST 2022

**International Right
to Know Day
Wednesday 28
September**

This day was established to raise awareness about people's right to access government information while promoting freedom of information as essential to both democracy and good governance.

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 decisions, along with the ICO's education and outreach activities.

International Right to Know Day (Wednesday 28 September) is right around the corner. Our theme for this year is "Ask it, Know it, Use it". The ICO team is happy to be able return to in person initiatives as we celebrate the right to know in Bermuda. On International Right to Know Day, the ICO team will be in the City of Hamilton at two locations: City Hall (Nelly's Walk) and the Cathedral, from 11:00am to 1:00pm to meet and greet any members of the public who want to learn more about PATI rights and how to use them. The full schedule of Right to Know Week initiatives are available in this Roundup.

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DECISIONS ISSUED

During August 2022, the Information Commissioner received three new applications, issued six decisions and closed one invalid case. Highlights are below:

Read [Decision 18/2022](#) to learn whether a number of different exemptions apply to records about payments made by the Government.

In [Decision 18/2022](#), the Information Commissioner considered an internal review decision by the Ministry of Health Headquarters (Ministry Headquarters) for a public access to information (PATI) request for records relating to the payments made by the Government to the Brown-Darrell Clinic and Bermuda Healthcare Services. The Ministry Headquarters identified extensive records responsive to the PATI request, some of which are considered in a separate but related review by the Information Commissioner.



[Decision 18/2022](#) considered the records which the Ministry Headquarters claimed to fall within various exemptions, including those in sections 25(1)(c) (commercial information), 27(1)(a), (c), (d) (Cabinet documents), 28(1) (Ministerial responsibility), 30(1)(c) (ongoing negotiations), 37(1) (disclosure prohibited by other legislation) and 23(1) (personal information).

The Information Commissioner found that some of the records which the Ministry Headquarters claimed to be exempt actually fall outside the scope of the PATI Act, because they were created or obtained by the Attorney General's Chambers in the course of carrying out its functions. She upheld the Ministry Headquarters' reliance on the exemptions in part only and ordered the partial disclosure of parts of the responsive records by 14 September 2022.

Careful consideration of section 4(1)(b)(iv) continues.

In [Decision 21/2022](#), [Office of the Governor](#), the public authority's refusal to disclose a requested record was upheld. The PATI requester asked Government House for a copy of any employment settlement agreement with the former Commissioner of Police. After her review, the Information Commissioner was satisfied that the settlement agreement fell outside the scope of the PATI Act under section 4(1)(b)(vi). [Decision 21/2022](#) explains that the PATI Act does not grant the public a right of access to those records which are created by the Attorney-General's Chambers in the course of carrying out its constitutional functions.

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DECISIONS ISSUED...cont.

Failure to decide cases continue to shed light on the Head of Authority's responsibility to issue an internal review decision during the PATI process.

In [Decision 23/2022](#), [Ministry of Economy & Labour Headquarters](#), the Applicant sought records of the Ministry Headquarters' communications with the St. Regis Bermuda Resort or its parent company, specifically relating to a Memorandum of Understanding on work permits for closed and restricted categories. The Acting Information Commissioner found that the Ministry Headquarters did not issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act. As a result, the Acting Information Commissioner has ordered the Ministry Headquarters to comply with the requirement to issue an internal review decision to the Applicant on or before 19 September 2022.



The Information Commissioner urges both public authorities and Applicants that if requested, an internal review decision is required by the Head of Authority under the PATI Act and gives the Applicant an answer on whether access is granted to the records they seek. In addition, internal review decisions must explain to the Applicant that they have the right to an Information Commissioner's review, while also addressing any issues that arose while the request was handled. This safeguards the PATI requester's right to a response to their request, rather than facing further delay.

For clarification, under the PATI Act, the Head of Authority for government departments is the permanent secretary for the Ministry. A listing of current Heads of Authority is available on the ICO website. In this decision, the Information Commissioner acknowledged that in the absence of any amendment to the PATI Act to change the designated head, permanent secretaries may delegate PATI-related tasks as they see fit, before they issue their internal review decision on whether access is granted to records. 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.

In [Decision 19/2022](#), [Department of Communications](#), the Information Commissioner considered the Applicant's request for records of the Department's communications with the Premier, from a certain time period. The Information Commissioner concluded that the Department did not issue an internal review decision to the Applicant within the six-week timeline set out in the PATI Act (failure to decide). However, during the Information Commissioner's independent review, the Department issued an internal review decision for the PATI request. As a result, the Information Commissioner does not require the Department to take any further action with respect to this Decision.

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DECISIONS ISSUED...cont.

Can a PATI request help a public authority identify issues that need attention? Yes! Read [Decision 20/2022](#) to learn how.

There are still value-added lessons both for the public and public authorities, that arise from making, receiving and processing PATI requests, even when the requests do not necessarily result in disclosure of the requested records. As a result of a PATI request for a copy of the title deed of Tudor Farms (an extensive area bought by the Government in 1989 and zoned as Agricultural Service and Open Space Reserve), the Department learned that the deed was missing. The Information Commissioner concluded in [Decision 20/2022](#) that the Department was justified in relying on the administrative denial ground in section 16(1)(a), because the Department conducted a reasonable search of its electronic and physical records before concluding that the deed could not be found. Recognizing that the deeds are missing and that they are of interest to the Applicant, the Department has taken it upon itself to address this issue and keep the Applicant informed, beyond the parameters of this PATI request.



How does the PATI Act help to eliminate unnecessary secrecy? [Decision 22/2022](#) provides an example involving the 2020 General Election Nomination Papers.

Past practices are important and helpful when public authorities consider granting or denying access to a requested record under the PATI Act. However, it is the responsibility of public authorities to provide sufficient evidence to the Information Commissioner to justify applying the exemption to those records. For example, if a public authority decides to rely on exemption provisions in the PATI Act, they must understand the scope of the exemptions and carefully apply them to the record or part of the record. [Decision 22/2022](#), [Office of the Parliamentary Registrar](#) (Parliamentary Registry), touched upon this point.

In [Decision 22/2022](#), the Information Commissioner found that the Parliamentary Registry was not justified in relying on section 37(1) of the PATI Act to deny public access to the 2020 General Election Nomination Papers, because their disclosure is not prohibited by section 75 of the Parliamentary Election Act 1978 (Election Act). Past practice, standing alone, is not enough under the PATI Act.

Section 75 of the Election Act prohibits the Registrar from giving access to any other person, or to allow them to inspect, “documents relating to a parliamentary election delivered to [the Registrar] by a Returning Officer pursuant to the [Election Act]”. There was no doubt that the Nomination Papers related to the 2020 General Election. They were delivered to the Registrar by a Returning Officer. But the Information Commissioner did not accept that such delivery of the Nomination Papers was performed pursuant to the Election Act. Rather, the

DECISIONS ISSUED...cont.

delivery of the Nomination Papers to the Registrar was a matter of the Parliamentary Registry's practice. Therefore, the Nomination Papers did not fall within the scope of documents captured in section 75 of the Election Act.

In coming to her conclusion, the Information Commissioner referred to the express provision in the Election Act which requires a Returning Officer to deliver to the Registrar the counted, rejected, spoilt and unused ballot papers on the completion of the counting of the votes. No express provision in the Election Act covered the Nomination Papers, and past secrecy based on practices had to give way to the public's right to know under the PATI Act. The Information Commissioner found that only certain personal information about the candidates and their sponsors needed to be redacted. It was information not previously included in the public notices during the elections, such as home addresses.

Additionally in this [Decision](#), the Information Commissioner was satisfied that, before relying on section 16(1)(a) of the PATI Act to deny access to the 2020 General Election Public Notices that had been displayed at each election hall, the Parliamentary Registry had taken all reasonable steps to conclude the Public Notices could not be found.



ICO STATISTICS AS OF 31 AUGUST 2022

(from 1 April 2015)

Total applications for independent review by the Information Commissioner	241	Closed: Decided	121
Pending investigations	59	Closed: Resolved	25
Applications pending validation	2	Closed: Abandoned	7
		Closed: Invalid	27

COMMUNITY OUTREACH & PUBLIC AWARENESS

An important part of the Commissioner's mandate is to raise awareness about PATI rights and how the public can use them. The Commissioner is often invited by organizations who wish to have a PATI presentation for their immediate team or alternately for the wider community group that they serve.

Recently the Information Commissioner had the pleasure of providing a PATI presentation to Rotary Club of Sandys, which was hosted by Club Service Director Martin Hatfield. The Commissioner also returned as a presenter for this year's cohort of the Future Leaders Programme. Their summer empowerment course is for middle and high school students in Bermuda who have an interest in service, citizenship, social justice or leadership. Commissioner Gutierrez spoke to the students about their PATI rights as teens in Bermuda, the role of the Information Commissioner and the ICO and the importance of being informed and engaged with public decision makers.



“Get up, Stand up – Building New Data Rights Regimes in the Greater Caribbean”, organised by Alexander White, Privacy Commissioner for Bermuda.

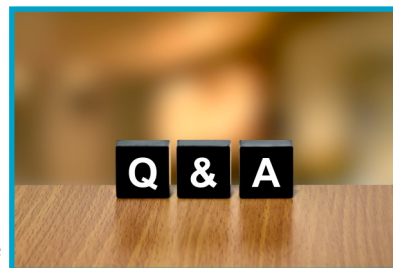
Commissioner Gutierrez also participated in the recent RightsCon conference held virtually from 6-10 June which is a human rights focused conference. The emphasis for this conference was data protection, privacy, artificial intelligence, access to internet/equality issues and surveillance, in the digital age. Commissioner Gutierrez participated on the panel entitled

If your community group would like to schedule the ICO for an outreach session or virtual education event, please contact Sheena Bassett at sbassett@ico.bm or call 543-3700.

Q&A CORNER WITH THE ICO

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

I Want to Know about keeping a PATI requester's identity confidential...



Q The PATI Act requires public authorities to keep the identity of a PATI requester confidential. Does this mean I cannot share the requester's identity with my colleague in any circumstances when I am responding to a PATI request?

A Under section 12(1) of the PATI Act, a requester's identity must be kept confidential. If specific conditions are met, however, public authorities' decision to reveal the identity of a PATI requester either to the public or to certain individuals, could be justified.

Public authorities may reveal the identity of a requester if the requester consents to the disclosure of their identity to others. The Information Commissioner highly recommends that public authorities obtain the requester's consent in writing. When giving consent, a requester may choose to limit the scope of the disclosure of their identity. A requester may, for example, consent to the disclosure of their identity to the world, while another may consent to the disclosure of their identity only to certain parties.

Public authorities may also disclose the identity of a requester (without their express consent) only to a person who is required to deal with the request under the PATI Act. As such, an Information Officer identifying the requester when forwarding an internal review request to the relevant Head of Authority is not in breach of the confidentiality requirement.

Circumstances may arise in which an Information Officer has to reach out to their colleagues within the same public authority to retrieve records that are responsive to a PATI request. In those circumstances, Information Officers should not simply forward the PATI request email or form to their colleagues. A recommended practice is to accurately describe the records being sought by the requester. The focus should stay on the requested records, and not the requester.

The PATI Act allows Bermudians and residents to make requests for their own personal information. Because of this, sometimes describing the requested records alone may give a hint to a fellow public officer who is assisting an Information Officer with a search as to who has made the PATI request. Even in that situation, focus on the records, instead of the requester. For example, when communicating with fellow public officers instead of saying that "Mr. Smith has made a PATI request for records on himself", instead say "a PATI request for records of Mr. Smith has been made".

**Information Commissioner's Virtual Quarterly Briefing**

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

Topic: **PATI Procedures*****Conflicts of interest in PATI decision making; extensions of time; and consequences of misidentifying the Head of Authority***

ICO Briefings are for public authorities only.

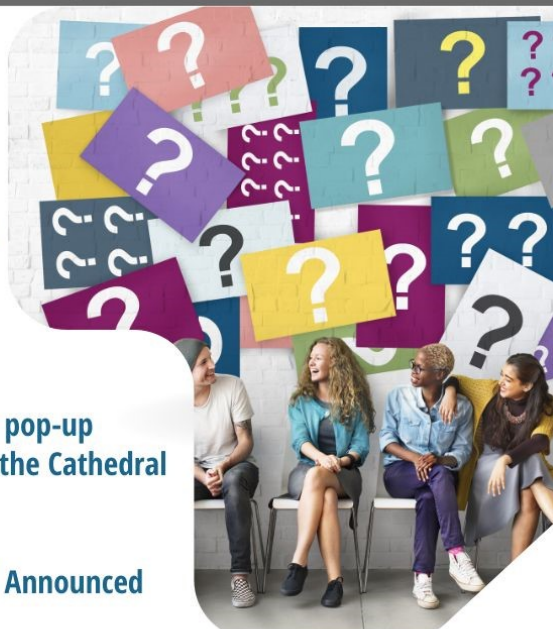
Registration details has been sent directly to public authorities.

Information
Commissioner's
Office**INTERNATIONAL RIGHT TO KNOW WEEK**

26-30 September 2022

Ask it, Know it, Use it!

- ✓ **Monday 26 September**
8:15am: Vibe 103 with DJ Chubb
- ✓ **Tuesday 27 September**
7:45am: Power 95 with Miss Thang
- ✓ **International Right to Know Day**
Wednesday 28 September
8:00am: The Daily Hour
11:00am: Meet the ICO team at our pop-up
booths at City Hall (Nelly's Walk) & the Cathedral
- ✓ **Thursday 29 September**
Information Commissioner's Award Announced



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