

Information
Commissioner's
Office



ANNUAL REPORT 2022

CHAMPIONING TRANSPARENCY



PUBLISHED

Redesigned ICO website,
ico.bm
P. 13



9 Monthly
Roundups
published
P. 16



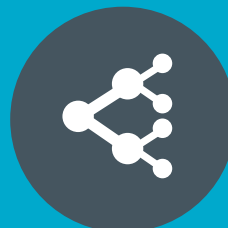
2022 HIGHLIGHTS

“We know from the enquiries and comments received by the ICO that Bermudians and residents recognise the value of their PATI rights to remain informed and strengthen their ability to hold public authorities and elected officials accountable.”

Information Commissioner's Welcome. **P. 2**



15,700+
page views of ico.bm
P. 18



117,000+
reach for social
media campaigns
P. 18

CHAMPIONING TRANSPARENCY



5,800+ views of *Ask it, Know it, Use it!* Right to Know Day 2022 video
P. 19



54 new applications for an independent review by the Information Commissioner in 2022
P. 24



38% increase in applications for an independent review by the Information Commissioner in 2022 compared to last year
P. 24



63% increase in applications closed by the ICO in 2022 compared to last year
P. 27



34 Decisions issued by the Information Commissioner
P. 28



100th Information Commissioner's Decision issued
P. 29



17% more PATI requests made in 2022 compared to last year
P. 40



44% of public authorities' initial responses to PATI requests in 2022 granted access in whole or in part to public records
P. 40



“Limited budgets, reduced staff and increased workloads are challenges faced by many authorities. Responding efficiently to PATI requests, however, is a fundamental component of modern democracies that cannot be set aside when challenges arise. Rather, it is precisely during such times, when choices are made about funding and service priorities, that the public must be fully enabled to understand and evaluate the decisions being made in their name.”

Information Commissioner's Welcome. P. 2

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*Transmittal
Laid before each House of the Legislature in March 2023, as
required by section 58(1) of the Public Access to Information
Act 2010.*



WELCOME

I am honoured to welcome you to the 2022 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 2022 calendar year. It also highlights the work of the Information Commissioner's Office (ICO) during the 2022-2023 fiscal year, 1 April 2022 to 31 March 2023.

As a good governance oversight body, the ICO has grown continuously over the years from my appointment on 2 March 2015 as the ICO's sole officer to the robust, nimble and well-functioning organisation that we are today. The ICO reached a number of important milestones this year. In January, I issued my 100th Information Commissioner's Decision Notice. The first one hundred decisions have helped clarify and uphold Bermudians and residents' rights under the PATI Act. This year also brought a continuation of the first legal challenge to the scope of the Information Commissioner's authority to examine records to which public authorities claim that the PATI Act does not apply. We currently await the Court of Appeal's decision in [Information Commissioner v Attorney General](#).

For the first time, the ICO also moved from a consistently under-staffed authority to attaining a full complement of officers, ready to pursue the challenge of meeting the Information Commissioner's mandate. The impact of this additional capacity has been substantial. We closed more applications this year than ever before, achieving a 63% increase over the number of applications closed in 2021, despite

Information
Commissioner's
Office



a 38% increase in the applications received compared to 2021. This enabled the ICO to make considerable progress on our backlog of pending applications, and was accomplished alongside other initiatives, such as our Quarterly Information Commissioner's Briefings for public authorities, public outreach programmes, and numerous publications.

In redesigning the ICO's website, we took the opportunity to ask ourselves: what information about our organisation, work and spending would the public (and public authorities) want to know, and how can we present it in an accessible and user-friendly format? The result is a website that models an approach known as 'transparency by design', and invites the public and public authorities to continue to envision how public information can be more readily available.

Similarly, Bermudian and residents' use of their PATI rights and public authorities' PATI practices have also grown. As we highlight in our discussion of the 2022 Information Commissioner's Decision Notices, our reviews involved PATI requests seeking information about a variety of topics with broad public impact. PATI requesters are seeking more transparency on questions of work permit exceptions; various public-private partnership arrangements; COVID policies, spending and programmes; the development and regulation of the gaming industry; the Government's Molecular Diagnostic Lab, Tudor Farm, and more. We know from the enquiries and comments received by the ICO that Bermudians and residents recognise the value of their PATI rights to remain informed and strengthen their ability to hold public authorities and elected officials accountable.

At the same time, public authorities vary in their ability to respond to this growing use of the PATI Act. Limited budgets, reduced staff and increased workloads are challenges faced by many authorities. Responding efficiently to PATI requests, however, is a fundamental component of modern democracies that cannot be set aside when challenges arise. Rather, it is precisely during such times, when choices are made about funding and service priorities, that the public must

be fully enabled to understand and evaluate the decisions being made in their name.

When having to do more with less, it helps to turn attention on making better use of what is within officers' reach. Introducing legislative changes and allocating more resources are not always fitting solutions to existing gaps in practice. Strengthening the quality of public authorities' day-to-day practices in applying the PATI Act, and generally in managing records, is paramount. To that end, the ICO has focused on extending practice-oriented guidance to the individuals in public authorities working with the PATI Act—and we will continue to do so in the upcoming year. Knowledgeable and empowered Information Officers are critical assets. Clear, informative and timely communication with PATI requesters goes a long way to closing gaps in perception about what records actually exist. The Government and public authorities' success in upholding the public's right to access public records through timely, complete and accurate responses depends on these Information Officers. People and practice matter.

Finally, I am grateful to the growing number of skilled, dedicated and nimble officers at the ICO. As a team, they have added to the breadth of expertise and knowledge the ICO brings to our work. Their commitment to the PATI Act and good governance is the foundation of the ICO's accomplishments reflected in this year's Annual Report.

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



LEFT TO RIGHT

IAN CAMERON | INVESTIGATION OFFICER

ANSWER STYANNES | ACTING DEPUTY INFORMATION COMMISSIONER

KENTISHA TWEED | INVESTIGATION OFFICER

GITANJALI S. GUTIERREZ | INFORMATION COMMISSIONER

TIKITTA SUHARTONO | OFFICE MANAGER

SHEENA BASSETT | PROJECT OFFICER

LAKAI DILL | INVESTIGATION OFFICER

ICO 2022 TIMELINE

APRIL 2022 – MARCH 2023

APRIL 2022

- International Conference of Information Commissioners (ICIC) encourages participation in UNESCO's Survey on Public Access to Information (Sustainable Development Goals Indicator 16.10.2)

MAY 2022

- Information Commissioner attended ICIC Executive Committee virtual meeting
- Kentisha Tweed joined as Investigation Officer
- Information Commissioner presented about ICO for Auditor General's team
- Team I.C.Oh! participated in *Virgin Pulse Global Health Challenge* sponsored by Government's Wellness Committee

JUNE 2022

- Information Commissioner participated on RightsCon 2022 panel
- Information Commissioner Gutierrez and Investigation Officer Answer Styannes attended ICIC 13th annual conference in Mexico
- Endorsed ICIC's public statement on access to information as milestone of digital age
- Information Commissioner attended ICIC Executive Committee virtual meeting
- Released public awareness video on Information Commissioner and ICO's role

JULY 2022

- Launched redesigned website to model 'transparency by design'
- Information Commissioner presented on PATI for Sandys Rotary Club
- Information Commissioner presented during Future Leaders Programme course

AUGUST 2022

- Information Commissioner attended ICIC Executive Committee virtual meeting
- Released *How to Make a PATI Request* and *Your PATI Rights* brochures in Portuguese

SEPTEMBER 2022

- Held Information Commissioner's Quarterly Briefing for public authorities on PATI procedures
- Information Commissioner issued Right to Know Day video, *Ask It, Know It, Use It!*
- Hosted information booths on International Right to Know Day in City of Hamilton at Nelly's Walk and the Cathedral
- Information Commissioner guested on *Morning Rush* programme with DJ Chubb, *Miss Thang Show*, and *The Daily Hour*
- Presented Information Commissioner's Award to outstanding Information Officer



▶ Education video, *I Want to Know! PATI & Your Family*, available on ico.bm

OCTOBER 2022

- Information Commissioner attended ICIC Executive Committee virtual meeting
- Answer Styannes appointed as Acting Deputy Information Commissioner
- Ian Cameron joined as Investigation Officer

NOVEMBER 2022

- Distributed 2022 ICO Annual Return package to public authorities
- Court of Appeal hearing held in Information Commissioner v Attorney General, Civil Appeal No. 7 of 2022

DECEMBER 2022

- Held Information Commissioner's Quarterly Briefing for public authorities on annual return process

JANUARY 2023

- Published updated *ICO Guidance: Health or safety of individual exemption (section 22)*
- Published updated *ICO Guidance: Commercial information exemptions (section 25)*
- Published updated *ICO Guidance: Disclosure prohibited by other legislation exemption (section 37)*
- Published updated *ICO Guidance: Timelines for providing access to records (section 14 and Part 2)*
- ICO management and senior officers attended EAP training, *Supporting staff in crisis*

FEBRUARY 2023

- Held Information Commissioner's Quarterly Briefing for public authorities on handling complex PATI requests

MARCH 2023

- Published updated *ICO Guidance: Information Received in confidence (section 26)*
- Information Commissioner and Jamel Hardtman hosted *PATI & The People's Budget*
- Held Information Commissioner's Quarterly Briefing for public authorities on reasonable search
- Information Commissioner guested on *The Motion to Adjourn* radio programme
- Information Commissioner attended ICIC Executive Committee virtual meeting

Commissioner Gutierrez and media personality Jamel Hardtman prepare for the live broadcast of the PATI & the People's Budget held on 2 March 2023





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

PATI requesters have a right to initial and internal review decisions 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 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 34 to 38.

HOW TO MAKE A PATI REQUEST

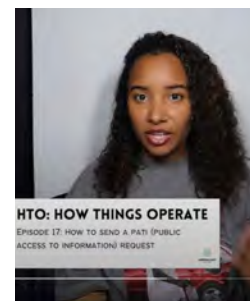
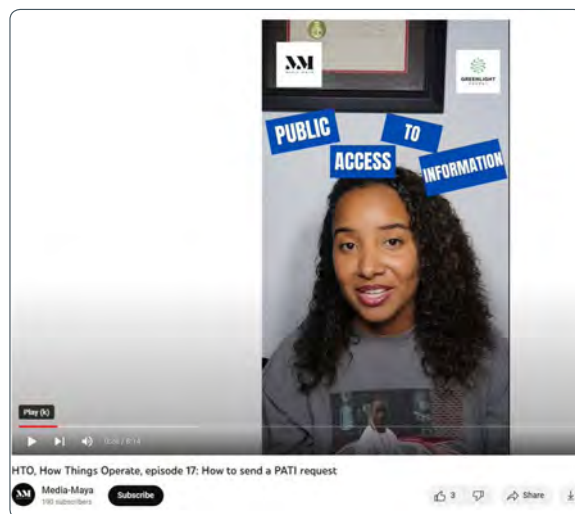


WHAT IS A 'PATI REQUEST'?

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, diagram, film or microfilm, videotape or sound recording.



HTO, How Things Operate, episode 17: How to send a PATI request by Media Maya, available on YouTube @media-maya3639



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 2022 - 31 MARCH 2023

RAISING PUBLIC AWARENESS

The ICO continued to promote PATI rights through education programmes, publications, social media outreach and Right to Know Day activities. Public awareness efforts aimed to encourage Bermudians and residents to be informed and empowered when engaging with public authorities.



enquiries responded to by the ICO from the public and public authorities

WEBSITE REDESIGN

In 2022, the ICO redesigned its website to model 'transparency by design', improving access to existing information and publishing more about the ICO and its work.

Public authorities must provide certain information without the need for a PATI request. Rather than transparency as an afterthought, public authorities can create and store records thinking that, by default, they will publish as much information as possible. In other words, manage records for the purpose of transparency.



The idea of 'transparency by design' encourages public authorities to create their records with the aim of making government-held information freely available to the public, as much as possible.



TRANSPARENCY BY DESIGN



Public access is embedded in design of records



Information is provided only if requested



Meeting minutes are created to divide disclosable information (e.g., spending) from exempt information (e.g., personnel matters)



Meeting minutes mix up disclosable and confidential information that is difficult to separate



Final decisions with reasons are published



Reports are available



Data are provided as poor-quality scans or other inaccessible formats



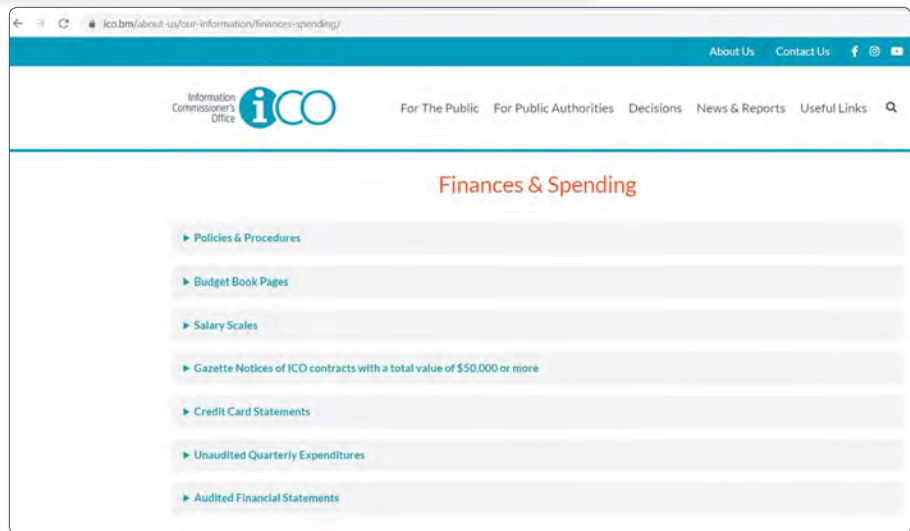
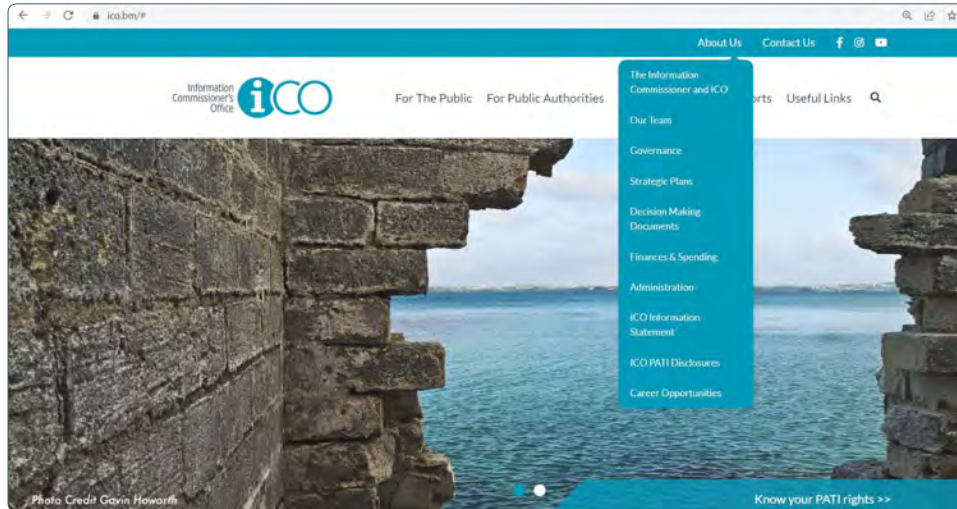
Data are published in workable formats, such as Excel or Word



Publications and websites lack basic information about public spending, decision making documents and organisational structure



The ICO continues to publish all of the information Commissioner's decisions, the ICO Monthly Roundups, all reports and press releases, educational videos, the ICO Guidances on the PATI Act provisions, the Information Commissioner's presentations and more. Enhancements included improved searches for the Information Commissioner's decisions and public authority lists, as well as clearer instructions on how to make a PATI request.



Striving for transparency by design, the ICO posted more records to show how the office manages public funds and goes about its work. The website now includes:

ICO's PATI request and disclosure log (without identifying requesters)

Staff meeting minutes

Business credit card statements

Unaudited quarterly expenditure reports

Salary scales

Other finance, governance and administrative record

Visit the ICO's redesigned website, launched in July 2022, at ico.bm.

ICO MONTHLY ROUNDUPS

The ICO Monthly Roundups give the public an up-to-date snapshot on recent work. They have key points from recent Information Commissioner's decisions, updates on the ICO's education and outreach activities, PATI tips for the public and public authorities, notices about upcoming events, and more.

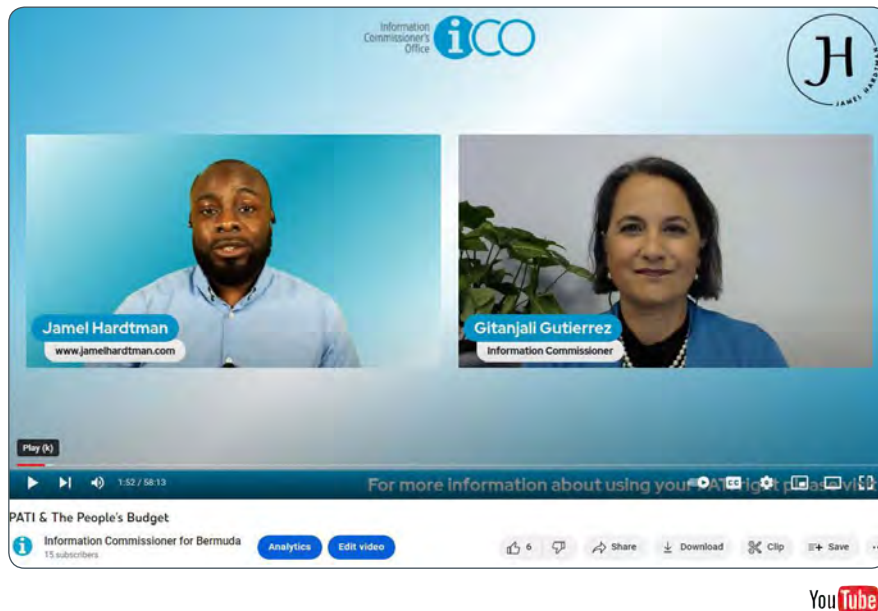
This year, 543 individuals received email notices of the publication of the ICO's Monthly Roundups.



543 individuals received email notices when ICO Monthly Roundups were published

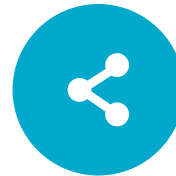
EDUCATION INITIATIVES

With a gradual return to in-person interactions, the Information Commissioner gave virtual and in-person presentations to various groups, including the Rotary Club of Sandys and the Future Leaders Programme's 2022 summer empowerment course. The Information Commissioner participated on a virtual panel for RightsCon 2022, *Get Up, Stand Up - Building New Data Rights Regimes in the Greater Caribbean*, organised by Privacy Commissioner Alexander White. While Parliament began debating the 2023/24 budget, the Information Commissioner joined entrepreneur and media personality Jamel Hardtman for a YouTube live session, *PATI & The People's Budget*. They discussed how individuals can use PATI rights to hold public authorities accountable for public spending decisions.



ONLINE OUTREACH

Social media is now integral to the ICO's outreach. Posts include timely updates about the ICO's work and general tips on using PATI rights (and their benefits), in an accessible and convenient format. .

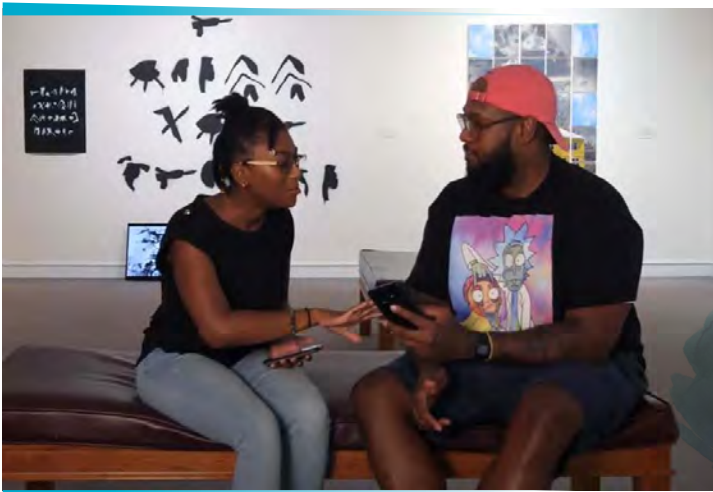


117,000+
reach for social
media campaigns



2,700+
engagements for
social media posts

The ICO's website received over 15,700 views from over 4,500 users, with an average website session lasting 2:08 minutes. This year, a higher majority of website users were new users, approximately 99% as compared to 80.6% in 2021.



99% of the ICO's website
users were new users
in 2022

▶ Education video, *I Want to Know! PATI & You*, available on ico.bm

RIGHT TO KNOW WEEK 2022

International Right to Know Day is celebrated globally on 28 September of each year to increase individuals' awareness of their right to access information held by the government and other public authorities. 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.

The ICO marked its 8th Right to Know Day in Bermuda with the theme *Ask It, Know It, Use It!*, focusing on individuals' use of their PATI rights and the information requested over the last eight years.

Information Commissioner Gutierrez held media interviews throughout the week, including with the Morning Rush programmes with DJ Chubb on Vibe 103, the Miss Thang Show on Power 85, and The Daily Hour. She also published an informational video discussing the use of the PATI Act to obtain information the public wants to know. Commissioner Gutierrez highlighted specific disclosures under the PATI Act that have helped promote beneficial changes in public services.



Ask it, Know it, Use it! informational video published by the ICO during Right to Know Week 2022



5,800+
views of *Ask it,
Know it, Use it!*
video



Interview on The Daily Hour with host Jamel Hardtman, co-host Larry Marshall, and Information Commissioner Gutierrez

On Right to Know Day, the entire ICO team hosted two information booths in the City of Hamilton at Nelly's Walk and the Cathedral. They provided information about PATI rights, with individuals welcoming the opportunity for one-on-one conversations with ICO officers about taking action and making PATI requests on issues of importance to them.



International Right to Know Day booth

PROVIDING GUIDANCE TO PUBLIC AUTHORITIES

The ICO encourages public authorities' compliance with the requirements of the PATI Act in several ways.

This year, the ICO published five updated ICO Guidances, incorporating the tests and explanations set out in the Information Commissioner's decisions:

Health or safety of individual exemption (section 22)

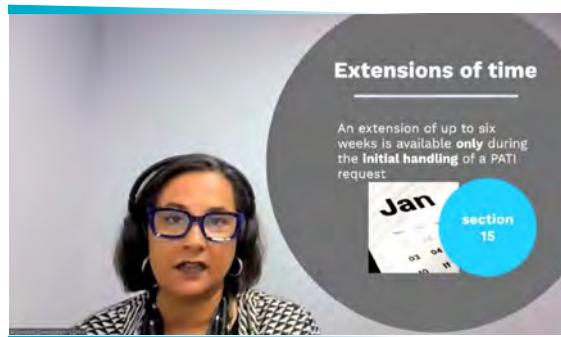
Commercial information exemptions (section 25)

Information Received in confidence (section 26)

Disclosure prohibited by other legislation exemption (section 37)

Timelines for providing access to records (section 14 and Part 2)

The ICO also returned to hosting the Information Commissioner's Quarterly Briefings in-person. The change allowed Information Officers and others from public authorities an opportunity to strengthen professional relationships between individuals working with the PATI Act.



The Quarterly Briefings focused more on strengthening public authorities' day-to-day PATI practices. This year's topics were:

Processing PATI requests: Procedural issues

2022 ICO Annual Return process

Navigating complex PATI requests: Tips for Information Officers

Practice tips for conducting a reasonable search

The ICO also returned to hosting the Information Commissioner's Quarterly Briefings in-person. The change allowed Information Officers and others from public authorities an opportunity to strengthen professional relationships between individuals working with the PATI Act.

88

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

43

different public authorities were represented.

Positive Feedback

ON THE INFORMATION COMMISSIONER'S QUARTERLY BRIEFINGS



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

ENFORCING THE RIGHT

1 JANUARY 2022 - 31 DECEMBER 2022

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.

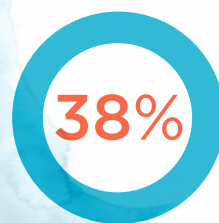


You can learn more about each of these stages in the *ICO Reviews Policy and Handbook*, available at [*ico.org.uk*](https://ico.org.uk/for-the-public/subject-access/requests/).

THE INFORMATION COMMISSIONER'S 2022 REVIEWS



new applications for the Information Commissioner's independent review



increase from applications received in 2022 compared to 2021

THE INFORMATION COMMISSIONER'S TOTAL CASELOAD FOR 2022

On 1 January 2022, the ICO carried over 43 open reviews from previous years. This brought the ICO's total caseload in 2022 to 97 applications.

	2019	2020	2021	2022
CASELOAD				
Reviews brought forward from previous years	39	33	33	43
New applications	36	21	39	54
Total	75	54	72	97

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.

	2019	%	2020	%	2021	%	2022	%
PROPORTIONS OF NEW VALID APPLICATIONS								
Valid	34	94	19	90	35	90	50	93
Invalid	2	6	2	10	4	10	4	7
Total	36	100	21	100	39	100	54	100

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 cited most often.

	2019	2020	2021	2022
EXEMPTIONS CHALLENGED IN NEW CASES				
s.22 Health or safety	0	0	0	1
s.23 Personal information	1	1	5	12
s.25 Commercial information	2	0	2	8
s.26 Information received in confidence	5	2	3	8
s.27 Cabinet documents	0	0	0	5
s.28 Ministerial responsibility	1	1	0	0
s.29 Deliberations of public authorities	2	2	0	5
s.30 Operations of public authorities	1	1	1	10
s.31 Financial and economic interests	1	0	0	2
s.32 National security, defence and international relations	1	0	0	0
s.33 Governor's responsibilities	0	0	0	2
s.34 Law enforcement	1	2	5	18
s.35 Legal professional privilege	4	1	0	3
s.36 Parliamentary privilege	1	0	0	1
s.37 Disclosure prohibited by other legislation	2	2	1	3
s.38 Non-disclosure of existence of record	1	0	0	1
Total	23	12	17	79

The number of administrative denials challenged in the new 2022 applications increased, compared to the number raised in 2021. This year, the ICO continued to see a significant and concerning number of applications challenging public authorities' failure to respond to PATI requests. These reviews are discussed in more detail on page 30.

	2019	2020	2021	2022
ADMINISTRATIVE DENIALS AND OTHER ISSUES CHALLENGED IN NEW CASES				
s.4 Inapplicability of PATI Act	5	2	1	5
Failure to decide	13	4	14	16
s.16 Administrative denial	4	11	7	12
Fees charged	0	0	0	0
Reasonableness of search	3	3	5	0
Other (e.g., manner of access given, insufficient assistance provided, etc.)	1	1	2	3
Total	26	21	29	36

APPLICATION OUTCOMES

Of 97 applications pending in 2022, the ICO closed 44 applications, or 45%, of them. With the ICO's increased capacity, it also closed 63% more cases in 2022 as compared to 2021. The Information Commissioner issued 34 decisions in 2022.

APPLICATIONS CLOSED IN EARLY STAGES

Applications for an independent review received 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.

	2019	2020	2021	2022
REASON FOR CLOSURE IN EARLY STAGES				
Invalid	2	2	4	4
Early resolution	1	0	0	0
Abandoned/Withdrawn	1	0	0	2
Total	4	2	4	6

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 choice not to pursue the review further.

	2019	2020	2021	2022
REASON FOR CLOSURE DURING INVESTIGATION				
Resolved	3	2	1	4
Abandoned/Withdrawn (other)	0	0	0	0
Total	3	2	2	4

INFORMATION COMMISSIONER'S 2022 DECISIONS

Of the 34 decisions issued, the Information Commissioner decided 17 of them for the applicant.

The remaining 17 decisions by the Information Commissioner upheld the public authority's decision in whole or in part.

	2019	2020	2021	2022
DECISION OUTCOMES				
For applicant	24	4	14	17
For public authority	6	8	3	5
Partially upheld	5	5	5	12
Total	35	17	22	34

DECISIONS ISSUED BY THE INFORMATION COMMISSIONER



JUDICIAL REVIEWS

On 9 November 2022, the Court of Appeal heard Information Commissioner v The Attorney General, Civil Appeal, no 7 of 2022. The Information Commissioner challenged the judgment in The Attorney General v Information Commissioner, [2022] SC (Bda) 6 Civ (25 January 2022), in which Puisne Judge Shade Subair 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 Information Commissioner “to examine records which fall outside the scope of the application of the PATI Act”, under section 4. The Court of Appeal’s ruling is pending.

In the related matter, while awaiting the appeal outcome, Decision 18/2022 concluded the Information Commissioner’s review of the Ministry of Health Headquarters’ reliance on other provisions in the PATI Act besides section 4. It resulted in a partial disclosure of records about the Government’s 2017 agreement on diagnostic imaging service payments, in September 2022.

Decision 18/2022 explained the background to the judicial review.

2022 DECISION HIGHLIGHTS

A PATI MILESTONE – INFORMATION COMMISSIONER ISSUES 100TH DECISION

In January 2022, a milestone was reached when Information Commissioner Gutierrez issued her 100th independent review decision since the PATI Act went into effect. **The Information Commissioner’s first one hundred decisions have significantly contributed to ensuring Bermudians and residents’ access to public records and to guiding public authorities on how to apply the PATI Act.** Each decision explains the Information Commissioner’s reasoning as fully as possible, without disclosing withheld information. For the first one hundred decisions, public authorities complied each time the Information Commissioner ordered them to release records to the public, conduct further searches for records, issue an outstanding decision, or take other actions, such as fulfilling the duty to assist a PATI requester.





The Information Commissioner's failure-to-decide decisions included one involving a request for records concerning COVID-19 testing programmes at Government's Molecular Diagnostic Lab

FAILURE-TO-DECIDE DECISIONS CONTINUE TO RISE

The Information Commissioner continued to issue a high number of decisions against public authorities failing to issue an internal review decision. The internal review is an opportunity for a head of authority to revisit how the public authority handled the PATI request, when the requester exercises their right to challenge the initial decision.

Almost half of the Information Commissioner's 2022 decisions were for a public authority failing to provide a PATI requester with an internal review decision. Seven of these sixteen decisions required an order. The other nine did not, because the public authority cooperated by issuing its decision during the Information Commissioner's review.



Failure-to-decide cases also involved PATI requests for records on the Premier's correspondence on the Fairmont Southampton deal with its new owners, GenCom

Six Ministry Headquarters, including the Cabinet Office, were responsible for ten of these sixteen 2022 failure-to-decide decisions. Often the Ministry Headquarters explained that their failure to meet the PATI deadline was due to a lack of resources or capacity to handle the PATI requests, or pointed to the volume, variety and scope of the PATI requests received. For some Information Commissioner's decisions, no explanation was provided at all.

While the ongoing strain on public sector resources are understandable and a broader concern, the public's right to receive timely internal review decisions from the Cabinet Office and other Ministry Headquarters is a key aspect of the PATI framework. The requests to these authorities, in particular, were on topics of heightened importance to much of the public. These PATI requests sought records on the Government's Molecular Diagnostic Lab, COVID-19 testing programmes, payments made to resQuest and resPartner, national health emergency costs, the Premier's correspondence with GenCom (the new owners of the Fairmont Southampton Hotel), payments made to certain participants in the 2 December 2016 protest at Parliament, and communications with St. Regis Bermuda Resort about a memorandum of understanding for work permits in closed and restricted categories.

The ongoing challenges at these highest levels of government undermine the public's right to be informed—and require new thinking on strategies to support compliance with the PATI Act. This could include delegating to a centralised PATI unit with subject matter expertise to provide support in handling PATI requests and background for internal reviews, or adopting an approach recently taken by the Ministry of Finance Headquarters to allocate temporary resources for a fixed period to address its outstanding obligations under the PATI Act.

...the public's right to receive timely internal review decisions from the Cabinet Office and other Ministry Headquarters is a key aspect of the PATI framework.

CLARIFYING THE LIMITS—AND REACH—OF PUBLIC ACCESS

Several 2022 decisions helped to clarify the boundaries of public access to records held by the government and other public authorities.

Section 4 of the PATI Act removes certain records from its scope, including those that are created or obtained by certain public authorities in the course of carrying out their functions. Despite public interests in disclosure, the PATI Act does not grant the public the same right of access to those records. Even still, a public authority may choose to disclose those records in the spirit of PATI; for instance, as seen in [Decision 09/2022, the Department of Public Prosecutions](#), when the Department released sex offence statistical information in response to a PATI request.

In [Decision 06/2022](#), the Information Commissioner upheld the Attorney General's Chambers' reliance on section 4 to refuse a request for records on costs for the same-sex marriage legal challenge at the Court of Appeal. Although the records were of public importance, they fell outside the scope of the PATI Act, because they were obtained or created by the Attorney General's Chambers while carrying out its constitutional function as the legal advisor to the Government. Similarly, in [Decision 21/2022, Office of the Governor](#), the Information Commissioner agreed that the employment settlement agreement with the former Commissioner of Police fell outside the scope of the PATI Act, because the Attorney General's Chambers had created it in the course of providing legal advice to the Government.



PATI requests were made for records related to agreements about work permits in closed and restricted categories

Other decisions reaffirmed the PATI Act's applicability to all of a public authority's institutional records and the need to determine whether public access should be granted. In [Decision 11/2022, Ministry of National Security Headquarters](#), for example, the Information Commissioner explained that the emails of the Headquarters' former Permanent Secretaries and Ministers are still records subject to the PATI Act. Their email accounts are institutional records, not private email accounts, which are managed by the authority even after an officer is assigned elsewhere or an individual leaves the public service. [Decision 24/2022, Department of Education](#) and [Decision 26/2022, Department of Immigration](#) discussed the need for public authorities to ensure that all of their pertinent record locations are searched in response to a PATI request, including hard copy files and electronic files of the relevant officers.

BROAD RANGE OF PATI REQUEST TOPICS

Increasing numbers of Bermudians and residents are making PATI requests, and the diversity of topics addressed by the Information Commissioner's substantive decisions is growing. Through the requests in Decisions [20/2022](#) and [25/2022](#), Department of Public Lands and Buildings, the public learned that the title deed of Tudor Farm could not be located, and the Department provided information about Tudor Farm's current tenants, tender records and decision making policies.

THE PARLIAMENTARY ELECTION ACT, 1978
NOMINATION PAPER

We do hereby nominate

(FULL NAME OF CANDIDATE - PLAIN PRINT)
of

(RESIDENTIAL ADDRESS - PLAIN PRINT)
and

(FULL NAME OF CANDIDATE - PLAIN PRINT)
of

(RESIDENTIAL ADDRESS - PLAIN PRINT)
being preliminary election of the _____ Constituency,
do hereby, as proposer and secondor respectively, nominate the following person as a proposer/secondor
to serve as member for the said constituency in the House of Assembly and certify that he is not
qualified for any other constituency and neither of us has nominated any other candidate in the
preliminary election.

National	Other Names	Residential Address	Profession or Occupation

(Signature) _____ Proposer _____
Date this _____ day of _____ 20____
Secondor _____

I certify on behalf of the _____ party, and I
witness a lawful meeting held of the chairman of that Party whereby that my candidate is
endorsed by that Party.

*Delete if not applicable

Signature _____
Date this _____ day of _____ 20____

It is a condition of the provisions of the Legislative (Qualification and Disqualification) Act
1952, which require an elector to be given by printed ballot or stamp to a "printed ballot"
within the meaning of that Act as a condition of voting for election.



The Information Commissioner issued four decisions in 2022 involving records of the Bermuda Gaming Commission

The Information Commissioner ordered disclosure of the 2020 General Election Nomination Forms in Decision 22/2022

PATI requesters also sought greater transparency around election and appointment records. In [Decision 22/2022](#), Parliamentary Registrar, the Information Commissioner found that the 2020 General Election Nomination Papers should be provided to the public, with certain personal information redacted (such as signatures). In [Decision 27/2022](#), Office of the Governor, a PATI requester sought, and received, greater disclosure of records of appointments of judges made by instrument under the public seal.

The Information Commissioner's decisions in 2022 reflect Bermudians and residents seeking greater transparency and accountability through PATI requests on diverse topics, such as work permits, the Southampton Princess, preserving Bermuda's agricultural reserves, election records and appointments, and the development and regulation of the gaming industry.

In these 2022 decisions, the Information Commissioner discussed at least nine more provisions than were reviewed in prior year's decisions.



Information Commissioner's decisions are published on the ICO website, which includes a monthly dashboard tracking the number of applications received and their current disposition. To receive the ICO's Monthly Roundups with highlights and summaries of the decisions, contact info@ico.bm.

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
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PUBLIC AUTHORITIES' PATI REPORTS (SECTION 58 OF THE PATI ACT)

At the end of each calendar year, public authorities must submit their annual PATI reports to the Information Commissioner for inclusion in her annual report. The public authorities' PATI reports must include the number of PATI requests received, the number of times various exemptions are involved and the disposition of PATI requests.

2022 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.

The Information Commissioner is pleased to report that nearly all public authorities submitted their 2022 ICO Annual Return, although there was a slight percentage increase in those that did not, as compared to 2021.

ICO ANNUAL RETURN	2021		2022	
	No. of Public Authorities	% of Total Number	No. of Public Authorities	% of Total Number
Timely submissions	87	45.5	121	64.7
Late submissions	84	44	56	29.9
Failed to submit	13	6.8	6	3.2
Under review	7	3.7	4	2.1
Total	191	100	187	100

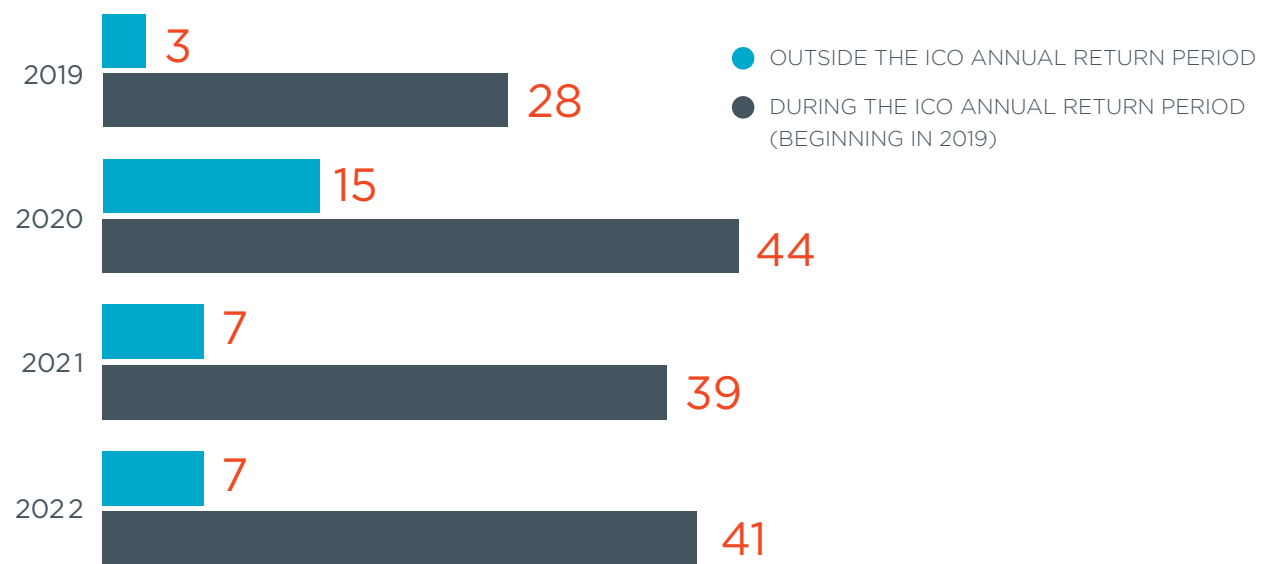
Noncompliance with the requirement in section 58(3) to report PATI statistics is addressed in the following section.

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.

During this ICO Annual Return period (December 2022–February 2023), public authorities gazetted 41 notices detailing contracts with a total value of \$50,000 or more. In comparison, only 7 Gazette Notices were issued outside the ICO Annual Return process, between 1 April 2022 and 30 November 2022.

NUMBER OF OFFICIAL GAZETTE NOTICES PUBLISHING CONTRACT DETAILS



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.

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

Bermuda Economic Development Corporation | Published regular articles and monthly newsletter, joined radio shows, hosted podcast, issued annual and other statistics on products and services, on bedc.bm.

Bermuda Regulatory Authority | Published quarterly financials on ra.bm.

Charity Commissioners | After Commissioners' meetings and decisions, Registry General published monthly registered charity lists and temporary fundraising licences issued.

Consumer Affairs | Published 2019-22 annual report; launched new website, at consumeraffairs.bm, with information on operations and statistics collated by Enforcement Officers.

Department of Statistics | Published core surveys and censuses, on gov.bm:

- Monthly Consumer Price Survey
- Monthly Retail Sales Survey
- Quarterly Balance of Payments and International Investment Position Survey
- Quarterly Construction Activity Survey
- Quarterly Hotel Gross Receipts Survey
- Semi-annual Labour Force Survey
- Annual Economic Activity Survey
- Annual Employment Survey

Financial Intelligence Agency | Publishes consultation papers, statistics, relevant legislation, information bulletins, policies and procedures, audited financial statements, annual reports, case studies and typologies, on fia.bm.

Labour Advisory Council | Minister of Economy and Labour, as Chair, often published statements in press about ongoing work.

Office of Project Management and Procurement | Ensured ministries and departments published procurement notices on gov.bm/procurement-notices.

Registry General | Published temporary fundraising licences, marriage officer licences and maritime licences issued, monthly registered charity list as well as 2021 annual report, on gov.bm.

Wage Commission | After publishing 2021 Recommendations for a Minimum Wage in Bermuda report, legislation passed on enforcing minimum hourly wage with rate to take effect on 1 June 2023.



TRANSPORT

Bermuda Airport Authority | Published 2020-21 annual report, including audited financials and activities undertaken, on airportauthority.bm. Website provides structure and leadership information; role in airport terminal redevelopment; retained government services; aviation-related fees for passengers and airlines; aeronautical information publication; media releases, notices and requests for proposal.

Bermuda Civil Aviation Authority | Published 2019-20 and 2018-19 annual reports on financial performance, officer salaries, board member listing and statements, on bcaa.bm. Website provides other information on regulatory activities.

Ministry of Transport | Published 2022 cruise ship projections with estimates on government revenues and passenger and crew spending, as well as information from Minister's business trips to cruise and airline partners.



EDUCATION

Ministry of Education and Department of Education (DOE) | Maintained shared website, moed.bm, featuring each public school and DOE sections with important documents and school updates. Kept social media active via Bermuda Public Schools' Facebook, YouTube and Instagram, on school happenings and upcoming events. Issued newsletters:

- *BPS Matters* – for public school staff
- *The Link Express* – for DOE staff
- *The Scoop* – for public school families



HEALTH

Bermuda Hospitals Board | Published on bermudahospitals.bm:

- Quarterly quality and patient safety performance indicators report
- Annual update of BHB patient satisfaction figures
- Contracts, with responses to related media queries
- Senior appointments
- Accreditation-related awards
- General press releases
- Annual reports for 2016 and 2017, with audited financial statements
- Updates on projects, agreements and investments (e.g. electronic medical record implementation) – also via Facebook, LinkedIn, WhatsApp, YouTube



COURTS & TRIBUNALS

Judicial Department | Publishes annual report on Judiciary's services, state of Court divisions and statistics, as well as Supreme Court and Court of Appeal judgments, and practice directions issued on departmental business, on gov.bm.



GOOD GOVERNANCE

Bermuda Public Accountability Board | Published 2022 annual report and other information, on bermudapab.com.

Human Rights Commission | Published 2021 annual report on intake and investigation statistics, human rights issues and emerging themes, and legislative developments, on humanrights.bm. Website houses annual reports, press statements, and developments involving Human Rights Act 1981 and HRC. Social media platforms promoted education for ongoing work and wider human rights landscape.

Office of the Auditor General | Published listing of all clients with last accounts audited per entity as well as audits and review engagements in progress, on oagbermuda.bm. Website provides annual, performance and public interest reports.

Office of the Ombudsman | Published 2021 annual report and special reports, on ombudsman.bm (available in print at public library and Bermuda College library).



PUBLIC SAFETY

Bermuda Police Service | Published PATI disclosures at bermudapolice.bm/content/pati-disclosures.

Parole Board | Publishes annual report, available on parliament.bm/library.

Royal Bermuda Regiment | Publishes regular press releases about Coast Guard, bi-annual recruit camps, COVID operations, promotions, recruiting efforts and other regular updates, on rbr.bm and social media.

Treatment of Offenders Board | Publishes annual report, available on parliament.bm/library.



COMMUNITY & ENVIRONMENT

Bermuda Post Office | Published press advisories and statements on service activities, service disruptions, international events impacting mail delivery affecting residents, via media, gov.bm and bermudapost.bm.

Corporation of St. George | Published monthly newsletter, on corpstgeorge.bm.

Department of Environment and Natural Resources | Published quarterly Fisheries newsletter for registered fishermen, as well as quarterly Envirotalk newsletter and other information on environment.bm.

Ministry of Youth, Culture and Sports | Published *Youth, Culture and Sport: Year in Review 2021-22*, *National Sports Policy 2022-27* and other information on boards and councils, on gov.bm.

Stamp Design Advisory Committee | With Bermuda Post Office, published regular stamp release updates, via media, gov.bm and bermudapost.bm.

Warwick Parish Council | Maintained active Facebook page.

2022 INFORMATION COMMISSIONER'S AWARD FOR OUTSTANDING INFORMATION OFFICER

This was the fourth 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 provides an opportunity to recognise individuals for their hard work and dedication in support of public access to information.

Mr. David Northcott, Information Officer for the Ministry of Home Affairs Headquarters, received the 2022 Information Commissioner's Award.



Left to right: Ministry of Home Affairs Permanent Secretary Rozy Azhar, Minister of Home Affairs The Hon. Walter Roban, JP, MP, Information Officer David Northcott, and Information Commissioner Gutierrez

“Bermuda’s Information Officers are often the first people that PATI requesters interact with when submitting their PATI requests. Information Officers who embrace this important role and make empowered decisions on behalf of their public authorities are invaluable assets in enforcing PATI rights. An Information Officer who is knowledgeable of the PATI Act and supported in this role, can have a positive impact on not only their public authority but the relationships their public authority has with the public they serve. This year’s award recipient, Mr. David Northcott, upholds the best qualities of an effective Information Officer. My team and I celebrate Mr. Northcott and commend him for his commitment to the principles of the PATI Act.”

Information Commissioner Gitanjali Gutierrez

2022 PUBLIC AUTHORITIES' STATISTICS

1 JANUARY 2022 - 31 DECEMBER 2022

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.

2022 PUBLIC AUTHORITIES' STATISTICS	Number of Public Authorities	% of Total Number
Received PATI requests	47	25.1
Did not receive any PATI requests	131	70
No statistical information available	5	2.7
Under review	4	2.2
Total	187	100

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 eight public authorities below that they would be listed in the 2022 Information

Commissioner's Annual Report as noncompliant with section 58(3) of the PATI Act and the submission of a 2022 ICO Annual Return:

Childcare Placement Board	Smiths Parish Council*
Hamilton Parish Council**	Southampton Parish Council*
Ministry of Economy & Labour Headquarters**	Whitney Institute Board of Trustees***

*The public authority also failed to comply with section 58(3) of the PATI Act in 2021.

** The public authority also failed to comply with section 58(3) of the PATI Act in 2021 and 2020.

*** The public authority also failed to comply with section 58(3) of the PATI Act in 2021, 2020 and 2019.

2022 PATI REQUESTS

Public authorities reported 158 new PATI requests for access to records under section 13 of the PATI Act. Another 8 PATI requests for records were reported as pending at the end of 2021 and were carried over to 2022. The public authorities with the highest number of new 2022 requests reported to the ICO were the Bermuda Police Service (52 requests) and the Bermuda Gaming Commission (8 requests). The Ministry with the highest number of reported requests for only government departments was the Ministry of Legal Affairs and Constitutional Reform Headquarters, with 19 requests received by its various departments.

	2019	2020	2021	2022
TOTAL PATI REQUESTS				
Reported new requests	93	114	135	158
Reported requests carried over from prior year	6	8	14	8
Total requests in processing for year	99	122	149	166

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

	2019	2020	2021	2022
INITIAL DISPOSITION OF PATI REQUESTS (AS AT YEAR END)				
Pending	14	11	9	24
Access granted in whole	29	28	33	42
Access granted in part	22	26	39	31
Access refused in whole	17	34	56	59
Unknown	17	15	12	10

In 2022, public authorities reported receiving 1 new request 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 2022, 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)).

		2019	2020	2021	2022
REASONS FOR REFUSAL IN INITIAL DECISION					
s.4	Record not within scope of PATI Act	6	0	2	3
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	11	15	25	22
s.16(1)(b)	Administrative refusal because insufficient information in request	0	6	1	1
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	2	3	5	5
s.16(1)(d)	Administrative refusal because publication of information is required by law within 3 months	1	0	0	0
s.16(1)(e)	Administrative refusal for vexatious request	0	3	1	0
s.16(1)(f)	Administrative refusal because information is already in public domain	6	7	11	9
s.16(1)(g)	Administrative refusal because fee payable under section 20 not paid	3	0	0	0
s.22	Health or safety	0	1	3	0
s.23	Personal information	9	13	27	18
s.25	Commercial information	4	3	2	1
s.26	Information received in confidence	6	6	8	10
s.26A	International tax agreements	0	1	0	0
s.27	Cabinet documents	0	0	0	0
s.28	Ministerial responsibility	0	2	3	0
s.29	Deliberations of public authorities	0	4	5	9
s.30	Operations of public authorities	6	11	6	4
s.31	Financial and economic interests	0	0	0	0
s.32	National security, defence and international relations	1	0	1	0
s.33	Governor's responsibilities	0	0	0	2
s.34	Law enforcement	5	6	11	15
s.35	Legal professional privilege	3	4	3	2
s.36	Contempt of court and parliamentary privilege	2	0	0	0
s.37	Disclosure prohibited by other legislation	2	5	3	6
s.38	Non-disclosure of existence of a record	3	3	0	1
	Failure to decide	3	6	9	18

Public authorities also reported that individuals sought internal reviews 37 times in 2022, though the outcome of one was not known. The majority of the internal review decisions denied access to the records, as shown below.

	2019	2020	2021	2022
DISPOSITIONS OF INTERNAL REVIEWS				
Pending	3	0	2	0
Grant access in whole	1	2	5	9
Grant access in part	5	12	8	7
Refuse in whole*	6	6	13	20
Procedural issues**	2	0	0	0
Referred to Commissioner	0	1	3	0
Total reported internal review decisions	17	21	31	36

*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 2022 to refuse PATI requests at the internal review stage are captured in the following table:

		2019	2020	2021	2022
REASON FOR REFUSAL IN INTERNAL REVIEW DECISION					
s.4	Records not within scope of PATI Act	4	0	0	0
s.16(1)(a)	Administrative refusal because record does not exist or cannot be found	2	4	5	6
s.16(1)(c)	Administrative refusal because request would cause substantial and unreasonable interference or disruption	0	2	0	1
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	0	0	0	0
s.16(1)(f)	Administrative refusal because information is already in public domain	3	1	0	3
s.23	Personal information	2	1	3	7
s.25	Commercial information	1	0	3	4
s.26	Information received in confidence	4	1	2	5
s.27	Cabinet documents	1	0	0	1
s.28	Ministerial responsibility	0	1	1	1
s.29	Deliberations of public authorities	0	2	0	7
s.30	Operations of public authorities	1	1	0	6
s.32	National security, defence and international relations	0	0	0	0
s.33	Governor's responsibilities	0	0	0	3
s.34	Law enforcement	1	2	7	11
s.35	Legal professional privilege	2	2	0	2
s.36	Contempt of court and parliamentary privilege	1	0	0	0
s.37	Disclosure prohibited by other legislation	0	1	0	2
s.38	Non-disclosure of existence of a record	1	0	0	2
	Failure to decide	0	0	6	2
	Request for internal review out of time	0	0	0	0

IMPROVING ACCESS TO INFORMATION

STRENGTHENING DAY-TO-DAY PATI PRACTICE

From the Government's 2021 Throne Speech last year to the Information Commissioner's 2021 *Report and Recommendations on the Implementation of the PATI Act*, recommendations have been made to amend the provisions of the PATI Act. No doubt some of these proposals could lead to administrative efficiencies and stronger rights for the public to access records held by the government and other public authorities.

As one of the more recent access to information laws in the world, however, the PATI Act's framework drew from best practices around the world. The PATI Act includes all of Bermuda's public authorities within its scope. It extends to vendors providing outsourced services paid for by public money. It requires proactive publication by public authorities to eliminate the need for a PATI request for certain information. The PATI Act vests the Information Commissioner with order-making authority to safeguard the public's rights. The PATI Act's provisions reflect a modern approach to access to information laws that benefits the public and public authorities.

The PATI Act's provisions reflect a modern approach to access to information laws that benefits the public and public authorities.

It has become clear that the greatest impact upon the public's access to records is not the provisions of the PATI Act, but the quality of the public authority's day-to-day PATI practice. A head of authority's leadership can ensure that their Information Officer has access to available resources to support the initial handling of a PATI request. This includes support and time allocated for processing a PATI request, as well as access to the Cabinet Office's PIPA/PATI Unit and its trainings, the PATI Practice Code, the ICO's Guidances and the Information Commissioner's Quarterly Briefings. Administrative efficiencies are created, for example, when a head of

authority instructs their officers to comply promptly with their Information Officer's query for information or copies of records, rather than requiring an Information Officer to expend additional time pursuing their colleagues for needed records.

Information Officers are the keystone to the PATI framework. An efficient and effective response to a PATI request begins with an Information Officer's timely acknowledgement and communication with a PATI requester. An Information Officer who evaluates and begins responding to a PATI request within the first two weeks of receipt is well prepared to allow time for notifying any third party, revisiting the relevant parts of the PATI Practice Code, seeking guidance from the ICO on the requirements to apply a particular exemption, and preparing a decision letter that carefully explains their reasoning, with support, to the PATI requester.

Adhering to best practices for administering the PATI Act, which are readily available, along with helpful resources to implement them, will assist public authorities with improving efficiencies, encouraging leadership and good governance, closing knowledge gaps, and providing timely, comprehensive responses to PATI requests for the benefit of Bermudians and residents.

SIMPLIFY THE PATI REQUEST PROCESS AND ENABLE ANONYMOUS REQUESTS

For the eighth year, the Information Commissioner urges the Government to amend the PATI Act and Regulations to allow for anonymous PATI requests. Last year's public awareness survey confirmed that **Bermudians and residents continue to be concerned about the ability of public authorities to maintain the confidentiality owed to a PATI requester.** Removing the requirement that individuals be Bermudian or residents of Bermuda will enable individuals to make anonymous PATI requests. This development will encourage Bermudians and residents to exercise their rights to make a PATI request with confidence, knowing that they will not face any potential negative repercussion.

PUBLISH THE ADMINISTRATIVE CODE OF PRACTICE ON RECORDS MANAGEMENT

A number of public authorities have continued to strengthen their records management as part of the 2019 Government Reform Plan or their own business plans. **To support this progress, the Minister should develop the 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.

Locating records in response to a PATI request frequently presents challenges, and can be the most time-consuming part of processing a PATI request. An efficient and standardised framework for public records management applied to all public authorities, along with appropriate training and adequate resources, will enable the administration of the PATI Act to run more smoothly.

STRENGTHENING THE ORGANISATION

The ICO is now a well-established and effective oversight body, continually improving upon its processes and the effectiveness of its work.

PROFESSIONAL DEVELOPMENT AND NEW OFFICERS

The ICO's greatest asset continues to be its public officers. In 2022, the organisation benefitted from a growth in personnel. The ICO achieved full staffing for the first time since 2015, hiring two new officers and creating opportunities for leadership development for senior officers. In May and October 2022, the ICO welcomed new Investigation Officers Kentisha Tweed and Ian Cameron, respectively. Ms. Tweed came to the ICO with an extensive and diverse legal background. Immediately prior to joining the ICO, Ms. Tweed was a Prosecutor within the Department of Public Prosecutions, was responsible for advocating in Court, together with providing investigative, legal and analytical research. Mr. Cameron is also a seasoned investigator, with experience in the health sector, criminal justice, public investigations and social services. He brings expertise in legislative drafting, public policy development, regulation and compliance, and has led several national projects over the course of his career. Joining senior Investigation Officer LaKai Dill, they have brought a wealth of substantive knowledge and skills to the ICO's Review Team.

At the same time, the ICO initiated professional development opportunities for senior staff through long-term acting appointments. Answer Styannes, an Investigation Officer since 2016, began her appointment as the Acting Deputy Information Commissioner in October 2022. In this role, she supports the ICO Investigation Officers, serves on the ICO's Management Team and is improving the ICO's procedures and operations.








As an organisation, these movements have increased the ICO's capacity to be a value-added oversight body. The Review Team closed its highest number of cases in 2022, while at the same time, the ICO improved its resources available to the public and public authorities, such as updated guidances and its redesigned website.

INTERNATIONAL RELATIONSHIPS

Information Commissioner Gitanjali Gutierrez continues to serve on the Executive Committee of the International Conference of Information Commissioners (ICIC). The ICIC is the only permanent international network of Information Commissioners. Collectively, the ICIC protects and promotes 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 current members of the ICIC Executive Committee are:

	Albania	Information and Data Protection Commissioner
	Bermuda	Office of the Information Commissioner
	Chile	Chilean Transparency Council
	Kenya	Commission on Administrative Justice (Office of the Ombudsman)
	Philippines	Freedom of Information, Programme Management Office of the Philippine Information Agency (ICIC annual conference host 2023)
	South Africa	Information Regulator
	United States	Office of Government Information Services

In June 2022, Information Commissioner Gitanjali Gutierrez and Investigation Officer Answer Styannes attended the 13th annual conference of the ICIC, hosted by Mexico’s National Institute for Transparency, Access to Information and Personal Data Protection, in Puebla City, Mexico. 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 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. Commissioner Gutierrez and Ms. Styannes attended other sessions on transparency by design, capacity building, developing regional ICO networks, improving access for vulnerable groups, anti-corruption efforts, and freedom of the press.

Commissioner Gutierrez and other members of the ICIC Executive Committee were recognised as distinguished guests of Puebla City, a momentous event to honour the ICIC leadership’s contributions.



Find more information about the ICIC at informationcommissioners.org.



Information Commissioner Gutierrez presenting at ICIC conference



ICIC conference delegates

FINANCES

The ICO proactively publishes details of its financial decisions and public expenditures. The public may find the ICO's financial policies and procedures, budget, salary scales, contracts, credit card statements, unaudited quarterly expenditures, and audited financial statements on the redesigned website, ico.bm.

To ask for more information, email info@ico.bm.

LOOKING AHEAD

Looking at public access to information in the year ahead, one fact is paramount: people value and use their PATI rights.

The ICO's annual, national public awareness survey conducted annually from 2015-2021, confirms this: 76-80% of respondents believed that creating and enforcing the Act is a very important public investment, and 79-88% believed that the right of access to public records is important to them. Putting these values into practice, people have increased the number of PATI requests made by 16% in 2021 and 17% in 2022, over the year before.

By making PATI requests, people are fulfilling the Act's critical purposes, including increasing transparency and eliminating unnecessary secrecy, increasing the accountability of public authorities, and informing the public about public authorities' decision making and activities. As my Report shares, the Information Commissioner's decisions have touched upon topics impacting peoples' lives and work across Bermuda.

The Government has again raised concerns about the work required by public authorities to respond to PATI requests. Unlike last year, the Government has announced its intention to impose a new fee simply to make a PATI request. I have objected strongly to such a measure, which has created a barrier in other jurisdictions—and would undoubtedly do so in Bermuda.

In 2022, about a quarter of public authorities reported receiving PATI requests. Some have faced staffing and resource challenges in balancing their PATI requirements and other work. The PATI Act offers a framework to manage burdensome requests—one that balances communicating with a requester, encouraging good management of public records, and considering an authority's finite resources. A blunt fee to simply make a PATI request (or certain types) ignores this carefully balanced framework already available under the PATI Act, as well as the Minister's PATI Practice Code, trainings by the Cabinet Office's PATI/PIPA Unit, and guidance from the ICO.

I continue to urge the Government to consult meaningfully with the public (and public authorities) prior to any amendments to the PATI Act that may lessen the people's rights. Finally, my office can share data and analysis for all stakeholders' consideration, to help ensure that the PATI Act remains workable for public authorities and empowers Bermudians and residents with access to public records.

GITANJALI S. GUTIERREZ
INFORMATION COMMISSIONER

On 12 May 1989, the Government of Bermuda purchased Tudor Farm in Southampton Parish, which consists of buildings and a sizable tract of arable land, ‘to preserve the integrity of one of the few remaining agricultural units of its size in Bermuda’.



Department of Agriculture & Fisheries Monthly Bulletin, September 1996 Vol. 67, No. 9, p. 74. The Information Commissioner's Decision Notices 20/2022 and 25/2022 involved the title deed, current occupancy, and decision making documents related to Tudor Farm.



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