

MONTHLY ROUNDUP

Volume VI, Issue IV

APRIL 2023

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 practices for both the public and public authorities.

In this issue, we take a look at the Information Commissioner's recently issued decisions on a variety of topics including; fintech; Bermuda's shipwrecks, finders and artefacts that are in Bermuda's National Collection; and complaints or concerns about a certain tribe road's condition.

Back by popular demand: The ICO, in collaboration with Bermuda College, hosted a second session for practical tips for conducting a reasonable search for public authorities.

What happens after you make your PATI request? This month's Q&A focuses on the timelines that are built into the PATI process. Check it out.

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"Information and freedom are indivisible. The information revolution is unthinkable without democracy, and true democracy is unimaginable without freedom of information" – Kofi Annan, Nobel Peace Prize awardee of the Peace Prize and Former Secretary - General of the United Nations

DECISIONS ISSUED

During April 2023, the Information Commissioner issued three decisions. Highlights are below:

Know your PATI rights. Decision 05/2023 is a reminder of the right to a review of how a public authority handles a PATI request, not just whether access is granted to the records.

In **Decision 05/2023**, Cabinet Office, the Information Commissioner reminded public authorities that PATI requesters have the right under section 41(c) of the PATI Act to challenge a public authorities' decision to transfer their PATI request to another public authority. This section of the PATI Act is an important right for PATI requesters to have because if an applicant feels strongly that a specific public authority holds records responsive to their PATI request, exercising this right ensures that a specific public authority processes their PATI request, instead of simply passing the request to another public authority.



In this PATI request, the Applicant asked the Cabinet Office for records about fintech as well as the government's Fintech Unit. When the Applicant did not receive a timely internal review decision from the Cabinet Office, they asked the Information Commissioner for an independent review. During this Information Commissioner's review, the Cabinet Office explained to the ICO that it believed an internal review was not necessary, given that it had transferred the PATI request to another public authority based on a change in ministerial portfolios.

For illustration purposes, let's consider if a PATI request involved a specific government project. One important thing for both public authorities and PATI requesters to consider is that even though ministerial portfolios may change, historical records relating to a specific project, may remain with the original public authority that initially created them. Just because a ministerial change happens, that does not automatically mean that all public officers and records related to that government project migrated to the public authority that gained responsibility for it. It makes sense to assume that some records, like emails of a specific public officer who remains at the original public authority, may remain with the original public authority.

The Information Commissioner found that an internal review request had been properly made by the Applicant. Since the Cabinet Office's duty to respond was outstanding, the Information Commissioner ordered the Cabinet Office to issue an internal review decision within four weeks of **Decision 05/2023**.

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DECISIONS ISSUED...cont.

PATI, public processes and policies? Read Decision 06/2023 to find out how they are connected.

A key component of the PATI Act is that the responsibility is on the public authority to conduct a reasonable search of their databases and resources for requested records, and to document its search to determine whether the records do or do not actually exist. A public authority has this responsibility because it has a better understanding about what records it holds than the requester. The search process itself also provides the public authority with the opportunity to focus on specific records, and gain insight into how their records are stored, maintained and accessed, which ultimately benefits both the public authority and the public.



In **Decision 06/2023**, the Applicant made a PATI request to the Department of Environment and Natural Resources (the Department) for records related to shipwrecks, including a copy of the register of wrecks; the register of finders; a list of all known wreck locations with coordinates, photo maps and written descriptions; a listing of all known artefacts in the National Collection (including those of high intrinsic value with proof of valuation and security protocols); and a listing of all honorarium payments made to finders. Initially the Department denied the PATI request on the grounds that some of the requested records did not exist.

At times, when the Information Commissioner conducts her reviews, she is able to take a closer look at public processes and policies. This Decision describes in detail the processes under the **Historical Wrecks Act (HWA) 2001**. The HWA sets standards for the protection of Bermuda's marine heritage, as well as establishes expectations for the disclosure of some information about wrecks, artefacts and finders. **Decision 06/2023** shares how public access to shipwreck information is balanced with the Department's need for confidentiality around certain processes to encourage the voluntary provision of information about wrecks to the Custodian of Wrecks.

In her **Decision**, the Information Commissioner has found that the Department conducted a reasonable search and provided a complete response to the request. The Information Commissioner also has affirmed the Department's reliance on the exemption under section 26(1)(a) to withhold additional responsive records. The records contain private and confidential information that if released would prevent the Department from receiving similar information in the future that is necessary to properly fulfil its functions.

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DECISIONS ISSUED...cont.

During an Information Commissioner’s review, can a public authority amend which exemptions it is using? It can. Learn more in Decision 07/2023.



In **Decision 07/2023, Department of Works and Engineering** (Works and Engineering), the Information Commissioner considered a request to Works and Engineering asking for inspection and incident reports about a tribe road, as well as any records of complaints or concerns about the road’s condition. The Department in its internal review decision relied on the ‘operations of public authorities’ exemption in section 30(1)(a) to refuse the PATI request in full.

However, during the Information Commissioner’s independent review, Works and Engineering clarified that it relied on section 30(1)(a) to refuse access to parts of the request and relied on section 38(1) to refuse the existence of non-existence of the other parts of the PATI request.

The Information Commissioner affirmed Works and Engineering’s internal review decision to deny parts of the request and varied its internal review decision to deny the other parts of the PATI request. As a result, the Information Commissioner did not require them to take any further action with respect to this **Decision**.

ICO STATISTICS AS OF 30 APRIL 2023
(from 1 April 2015)

Total applications for independent review	Closed: Decided	139
by the Information Commissioner250	Closed: Resolved	29
Pending investigations45	Closed: Abandoned	7
Applications pending validation1	Closed: Invalid	29

Back by popular demand: *Introduction to practical tips for conducting a search*



Acting Deputy Information Commissioner Answer Styannes and Investigation Officer LaKai Dill co-presenting at Bermuda College

Information Commissioner's Office
in collaboration with
Bermuda College
presents

Introduction to practical tips for
conducting a search

Thursday, 27 April 2023
Location: Athene Lecture Theatre,
Bermuda College
10:00am - 12noon

RSVP@ico.bm to register.
Registration deadline: Tuesday, 25 April 2023

Information Commissioner's Office 

On 27 April ICO Investigators presented again to public authorities about practical tips for doing a reasonable search. This time, it was hosted at the Bermuda College, prompted by their request after last month's Quarterly Briefing.

The session focused specifically on email searches. First, attendees were guided through the PATI requirements underpinning a reasonable search, followed by a demonstration illustrating how to efficiently search for email records by using keywords, parameters and operators. To further reinforce the learning experience, the investigators together with attendees practiced practical search exercises, using an ICO dummy email, incorporating the search tips that they had learned to search for responsive records.

The session concluded with a reasonable search demonstration for a PATI request scenario where the Information Officer had good reason to believe the requested record was never created. Attendees walked away with an email search cheat sheet and a sample search log.

Throughout the two-hour session, questions and comments were shared from the floor, adding to an engaging and productive exchange between the ICO and public authorities about their practical experiences in processing PATI requests.

The presentation, with presenter's notes and handouts, will be available at ico.bm.

What did public officers who attended this session have to say about this session?

"These are needed as I realized there is further information I did not know..."

"Excellent hands on application."

"I learned some very useful information to assist me when making e-mail searches and what my process and logging should be."

"Easy to follow, even for persons who may not be technical."

"Interesting, clear, useful information, easy to see how to practically apply what we've learned."

"Very informative and helpful - will definitely use tips."

Q&A CORNER WITH THE ICO



When I submit my PATI request, what happens next? When should I expect an update on my request? Is there anything else that I need to do?

The PATI Act clearly outlines certain timelines that both Applicants and public authorities must observe during the PATI process.

Acknowledge of request for access: 5 working days

The PATI process always begins with someone taking action and submitting a PATI request to a public authority for records that they hold. Once a public authority receives a PATI request, they are obligated to acknowledge receipt of that request within five working days after receipt of the request.

In addition, once the public authority receives the request, if they determine that part of or the whole request should be transferred to another public authority, they must complete the transfer of a copy of the request to the other public authority within five working days. Once the transfer has been made, the public authority that receives the transfer has five working days to also acknowledge receipt of the PATI request.

Initial decision on request & extension of time: six weeks

The next important deadline is the timing of the initial decision from the Information Officer, whether it is the Information Officer who received the original PATI request or the Information Officer of the public authority that receives a transferred copy of the request. The PATI Act requires this decision to be issued to the Applicant no later than six weeks after receipt of the request.

However, if a public authority needs additional time to process the PATI request before issuing its initial decision, they can extend the time period by another six weeks. A public authority can do this for three reasons; (1) it needs more time to consider representations made by third parties; (2) it needs more time for any consultations about whether access to particular information is in the public interest; or (3) dealing with the request within the original period of six weeks would substantially or unreasonably interfere with the day to day operations of the public authority. After this time period expires, an initial decision must be issued to the Applicant.

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

Request for an internal review: six weeks

If an Applicant is not satisfied with the initial decision, they have the right to request an internal review decision. This review must be conducted by the Head of Authority of that public authority, who is identified in the Schedule to the PATI Act. The Applicant must submit their request for an internal review to the public authority within six weeks of the Applicant receiving their initial decision. The Head of Authority also has the discretion to accept the internal review request out of time.

Internal review & third party notifications: six weeks

Once the Head of Authority receives the request for an internal review, they have six weeks to make their internal review decision. At this phase of the PATI process, no extensions of time for issuing a decision are allowed. Note that if the Head of Authority intends to disclose records that involve any third party's personal or commercial information, or information given in confidence that may be exempt, it is good practice for the public authority to notify those third parties and seek their submissions before issuing the internal review decision.

Application for review by the Information Commissioner: six weeks

An applicant or a third party may apply for an independent review by the Information Commissioner if they are not satisfied with the internal review decision that they received from the Head of Authority or they did not receive the internal review decision within the six week timeline. The request for review must be submitted to the Information Commissioner within six weeks of the Applicant or third party receiving their internal review decision or if the deadline for them to receive one has passed.

Sending an email to info@ico.bm is one way to ask for an Information Commissioner's independent review. The Information Commissioner may also exercise her discretion to accept an application out of time. The Information Commissioner's Office will acknowledge receipt of your application within five working days. If the application for review is considered valid, there are several options that the Commissioner may use during her investigation: Each option has the potential to take a variety of timeframes, with the aim to provide an early resolution outcome or a formal, legally binding decision from the Information Commissioner.

Information Commissioner's Quarterly Briefings 2023-2024



Thursday, 8 June 2023
Thursday, 14 September 2023
Thursday, 7 December 2023
Thursday, 22 February 2024

ICO Briefings are for public authorities only.
Registration details will be sent directly to public authorities.