



Ministerial Statement

By

The Hon. Vance Campbell, JP, MP
Minister of Tourism and Cabinet Office

Updates to the Public Access to Information Act and Regulations

June 16, 2023

Mr. Speaker,

The purpose of the Public Access to Information Act, known as PATI, is to give the public the right to obtain access to information held by public authorities to the greatest extent possible, subject to exceptions that are in the public interest or for the protection of the rights of others. PATI was passed in 2010 and came into force in 2015. Since the implementation, Public Authorities have encountered some challenges along the way, as mentioned by the Premier in the 2023/24 Budget Statement this year. My statement today about reviewing and updating PATI and the PATI Regulations 2014, referenced as the PATI Regulations, should therefore not be a surprise.

Mr. Speaker,

The harmonization of PATI and PIPA, debated today in the Personal Information Protection Amendment Bill 2023, is only one area where PATI has been examined and amendments recommended and progressed through a collaborative exercise. There are various avenues where PATI and the PATI Regulations are reviewed, and recommendations brought forth to the Government for consideration. For example, annual reports from the Information Commissioner, the independent regulator for PATI, have been laid before this house annually since 2015, meeting the requirement under s58. Additionally, under s57 of PATI, the Information Commissioner may investigate and report on the operation of the Act. The most recent special report was delivered in 2021, which provided the findings from the review of PATI's implementation and provided recommendations. Recommendations are also received regularly from citizens and public authorities. Finally, overseas jurisdictions are examined to see how best practices used in mature public access to information, or freedom of information regimes, operate.

Mr. Speaker,

A number of areas are currently under review and PATI amendment bills will be brought forward over time. As mentioned earlier this year, the PATI PIPA Unit works with the Information Commissioner and others, discussing various recommendations which may result in these future amendments. There are also elements from other jurisdictions that have

been under consideration by the Government. One such area has been how other jurisdictions charge fees in their Freedom of Information regimes. To this end the Government has determined to proceed with the development of a Reasonable Charges for PATI concept that looks to the appropriate limit and fees regulation in the UK Freedom of Information and Data Protection Regulations 2004.

Mr. Speaker,

As with many other jurisdictions, it should be noted that Bermuda has a fee schedule in place that allows public authorities to charge for production costs in responding to PATI requests, such as photocopying, production of photographs, video duplication, copy of a microfilm, and other conversion costs. The review of charges beyond production costs in other jurisdictions primarily included fees for searching and retrieving records. They varied in areas where costs were assigned to other steps in the process of responding to a request, such as preparing a record for disclosure, examining, reviewing, preparing a schedule, redacting, decision-making, and communicating internally and with the requester.

Mr. Speaker,

We have to ensure that the public has access to the information of Public Authorities to better understand the reasoning for government actions. This enables transparency and accountability, hallmarks of a democratic government. At the same time, we must ensure that Public Authorities are

able to continue their business remits and obligations. Unfortunately, a number of requests have placed an undue burden on some Public Authorities in order to manage the request.

Mr. Speaker,

While this represents a shift from the earlier intention to charge an application fee for PATI requests, the Reasonable Charges for PATI concept will require the implementation of a fee structure, and will thus ensure that at least some of the costs of responding to requests are recouped. Like the UK regulation, a limit of working hours which would be deemed appropriate to respond to a request will be implemented. If it is estimated that a request would take longer to fulfill than that time limit, the public authority could either deny the request, or ask the requester to narrow the request, or invite the requester to pay a fee for the extra hours to fulfill the request. A flat fee per hour would be set for this work. The Bermuda framework would potentially establish sixteen (16) hours or two working days as the limit together with a sixty dollar (\$60) per hour fee thereafter.

Mr. Speaker,

The way this would work is as follows. If the public authority, after locating and reviewing the necessary records for a request, believes that the request will exceed the limit, they will produce a time estimate for the requester. If the time estimate is less than the time limit, the public

authority will process the request, according to the existing PATI procedure and at no charge to the requester. If the estimate is more than the limit, the requester will be invited to narrow the request in order to not incur a fee, or be invited to pay the fee, or the public authority can deny the request. The requester will be given a timeframe to agree, dispute the estimate, refine or withdraw the request.

Mr. Speaker,

This PATI Charges concept will alleviate the burden on Public Authorities in responding to PATI requests, and will serve to:

- a. Recognise that PATI requests are not the only demand on the resources of Public Authorities;
- b. Reduce the impact on time, energy and finances of Public Authorities to the extent that they negatively affect the normal public and operational functions of Authorities;
- c. Require requesters to focus requests to a more manageable size that can be accommodated by Information Officers i.e. allow requests yet encourage the requester to set appropriate limits; and
- d. Enable aggregation of requests, over a defined time frame, from the same requester, or requests from several persons appearing to be acting in concert.

Mr. Speaker,

The Reasonable Charges for PATI concept will also necessitate the creation of tools, guidance and training on the application of time limits and fees if the requester wishes to go over the limit. This would be required to ensure consistency of implementation across public authorities. It will also aid in minimizing any variance or difference in response. Additionally, public authorities have a statutory duty to assist requesters, making every reasonable effort in connection with their requests. Finally, I remind you that requesters will have the right of review, as they will have the opportunity to ask for an internal review of the decision based on the estimate, and subsequently a Commissioner's review. Consultation on this concept, and other PATI amendments, will take place with the Information Commissioner. I look forward to sharing continued developments in this area.

Thank you, **Mr. Speaker.**