

# CHAMPIONING TRANSPARENCY

Information  
Commissioner's  
Office



**ANNUAL  
REPORT  
2023**



**90,000+**

reach for social  
media campaigns

P. 14



**5,000+**

engagements for  
social media posts

P. 14



## 2023 HIGHLIGHTS

**We can see the impact on the PATI work of a number of public authorities of the investment in a good records management approach, proper training and at least some resources dedicated to the various requirements of the PATI Act.**

**These public authorities are able to provide more information to the public about their decision-making processes, spending and activities ....**

**Their examples of good PATI practice are a result of a strong commitment by their organisational leadership to the purposes and promise of the PATI Act.**

*Information Commissioner's Welcome. P. 2*



**LAUNCHED**

ICO Blog

P. 16



**27,800+**

ICO's website views

P. 16

## CHAMPIONING TRANSPARENCY



**86%** of respondents believe that the PATI Act is important to them (compared to 80% in 2022)  
P. 18



**71** participants attended the Information Commissioner Quarterly Briefings  
P. 20



**54** new applications received for an Information Commissioner's independent review  
P. 23



**62%** increase in formal decisions issued by the Information Commissioner  
P. 26



**66** applications closed by the Information Commissioner (compared to 44 in 2022)  
P. 26



**189** PATI requests made (compared to 166 in 2022)  
P. 39



**14%** increase in PATI requests made in 2023 (compared to 2022).  
P. 39



**43%** of public authorities' initial responses in 2023 to a PATI request granted access in whole or in part to public records  
P. 39



## RE-ELECTED

ICO to Executive Committee of International Conference of Information Commissioners  
P. 49



“ It is clear that the public’s expectations have been raised when it comes to being informed about the activities and decision making of government and other public authorities, and that **a number of public authorities have adopted a more open and responsive approach to PATI requests.** In line with the vision of the PATI Act, this critical shift towards a more transparent government and a more engaged community continues to be an integral part of Bermuda’s democratic maturity. ”

*Information Commissioner’s Welcome. P. 2*



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Transmittal

Laid before each House of the Legislature in March 2024, as required by section 58(1) of the Public Access to Information Act 2010.

# WELCOME

**I am pleased to welcome you to the 2023 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 2023 calendar year to fulfill the statutory reporting requirement in section 58(1) of the PATI Act. It also highlights the work of the Information Commissioner's Office (ICO) during the 2023-2024 fiscal year, 1 April 2023 to 31 March 2024.

Over the past year, the ICO has firmly established its role in safeguarding access to information, strengthened its capacity and addressed areas of performance needing improvement. At the end of March 2023, the Court of Appeal issued Information Commissioner v Attorney General, a landmark decision confirming the authority of the Information Commissioner to examine records when conducting a review. **The Court of Appeal's decision has entrenched the Information Commissioner's role in safeguarding the provisions of the PATI Act and in ensuring that PATI is not just a 'good idea' but an enforceable 'right' to be exercised by the Bermuda public.**

The ICO was also re-elected to the 9-member Executive Committee of the International Conference of Information Commissioners until 2026. Our role enables my office to bring the perspective of smaller jurisdictions to this international network. Both I and (now) Acting Deputy Information Commissioner LaKai Dill presented on panels during the June 2023 international conference. Our Executive Committee membership also strengthens the training and collaborative resources available for our ICO to carry out its work for the benefit of the Bermuda public and public authorities.

In 2023, the ICO increased its capacity and, for the first time, began the year with nearly full staffing levels. We also continued building the organisation's developmental capacity as officers moved into more senior leadership roles, including the appointments of our Acting Deputy Information Commissioner and our first Senior Investigation Officer. These resources are having an impact. **In 2023, I issued 55 formal decisions, a 62% increase over 2022.**

Most importantly, dedicated work by the full staff of ICO officers enabled us to reduce the number of cases that were pending for a year or more from 24 to 15, as of 31 December 2023. Since its establishment, the ICO has faced a backlog of reviews arising from both internal and external challenges. The delay by my office has burdened public





authorities and undermined the rights of the public. This year marked a turning point in addressing this deficiency.

This year, however, has not been without its challenges. On 20 September 2023, a cybersecurity attack against the Government IT-infrastructure disrupted public access to all electronic records held by the Government and other public authorities using the Government IT-systems. It also required these public authorities to adapt immediately to non-official means of communications and, for some, to establish alternative means of official communications, such as through Gmail or WhatsApp. As of today, questions remain about the restoration of access to historical electronic records and the need to preserve access to electronic communications on non-government or alternative communication platforms.

**Concerns about the burden of administering the PATI Act have also arisen. These concerns are not new and the ICO has been consistent in its call for thoughtful investment in the foundations of good records management practices along with adequate PATI training and support for the public officers tasked with responding to PATI requests.**

This includes the responsible Minister publishing the Government's Practice Code on the maintenance and management of public records, required by section 60(2) of the PATI Act to facilitate access to public records. This also includes public authorities taking advantage of resources that are available, such as the Cabinet Office's PATI/PIPA Unit, which now offers foundational PATI training for Information Officers.

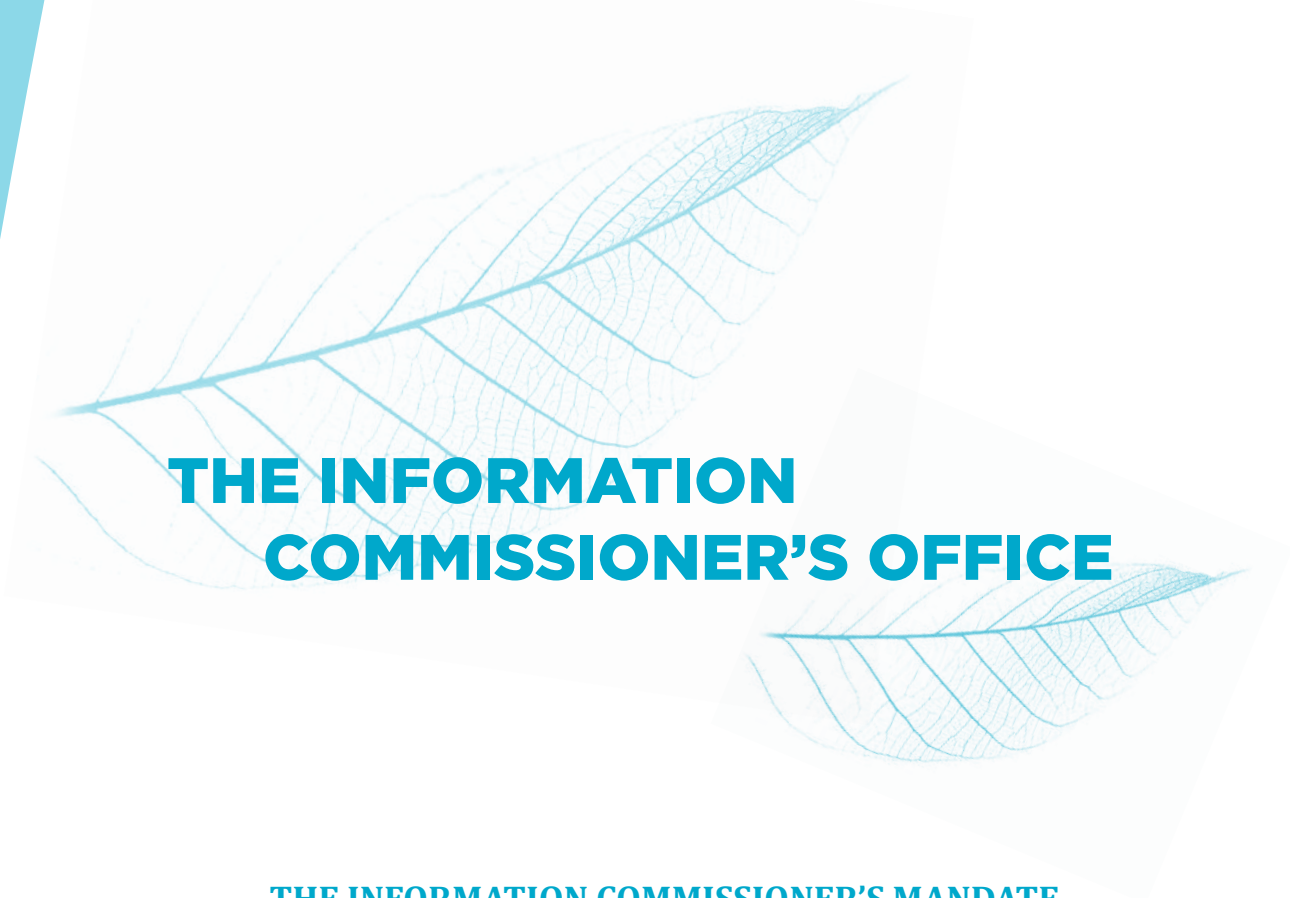
We can see the impact on the PATI work of a number of public authorities of the investment in a good records management approach, proper training and at least some resources dedicated to the various requirements of the PATI Act. These public authorities are able to provide more information to the public about their decision-making processes, spending

and activities. Even when they cannot grant public access to the particular records sought, they are able to fill the gaps by providing non-exempt information on the relevant topic. Their examples of good PATI practice are a result of a strong commitment by their organisational leadership to the purposes and promise of the PATI Act.

This will continue to be important as public access to information becomes more and more embedded in our culture. It is evident from our annual public awareness survey that the public's regard for the importance of PATI rights in 2015 has not only been sustained since the establishment of the PATI Act but has grown year over year. We have seen a 20% increase in the number of PATI requests submitted since last year and, despite the concerns raised by public authorities, the vast majority of respondents who asked for records from a public authority (whether through a PATI request or otherwise) were satisfied with the response they received. It is clear that the public's expectations have been raised when it comes to being informed about the activities and decision making of government and other public authorities and that a number of public authorities have adopted a more open and responsive approach to PATI requests. In line with the vision of the PATI Act, this critical shift towards a more transparent government and a more engaged community continues to be an integral part of Bermuda's democratic maturity.

Finally, as Information Commissioner I recognise that the strength and success of my office rests upon the shoulders of the bright, committed and professional officers in the ICO. Every accomplishment highlighted in this year's Annual Report is a tribute to their skill and collective work. I thank each of them for their service to Bermuda and her people.

**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, and**

**Review public authorities' actions under the PATI Act and issue legally binding decisions, when necessary**

In carrying out their mandate, the Information Commissioner is guided by principles of independence, integrity and fairness.



# ICO TEAM



## LEFT TO RIGHT

**IAN CAMERON** | INVESTIGATION OFFICER

**SHEENA BASSETT** | PROJECT OFFICER

**TIKITA SUHARTONO** | MANAGER - FINANCE AND ADMINISTRATION

**GITANJALI S. GUTIERREZ** | INFORMATION COMMISSIONER

**LAKAI DILL** | ACTING DEPUTY INFORMATION COMMISSIONER  
(October 2023 - present)

**CAITLIN CONYERS** | RELIEF INVESTIGATION OFFICER

**ANSWER STYANNES** | SENIOR INVESTIGATION OFFICER  
(Acting Deputy Information Commissioner October 2022 - September 2023)

**KENTISHA TWEED** | INVESTIGATION OFFICER (not pictured)



# ICO 2023 TIMELINE

## APRIL 2023 – MARCH 2024



### APRIL 2023

- Information Commissioner attended International Conference of Information Commissioners (ICIC) Executive Committee virtual meeting
- Held programme for public authorities on *Introduction to practical tips for conducting a search*, in collaboration with Bermuda College
- Information Commissioner held *Lunch & Learn* presentation about ICO and the PATI Act for Economic Development Department
- ICO's Audited Financial Statement for fiscal year ended 31 March 2021 tabled before each House of the Legislature

### MAY 2023

- Hosted information session with Office of the Tax Commissioner's leadership about the PATI Act
- Information Commissioner attended ICIC Transparency by Design Working Group virtual meeting
- Information Commissioner and Investigation Officer attended ICIC Executive Committee virtual meeting

### JUNE 2023

- Held Information Commissioner's Quarterly Briefing for public authorities on accessing PATI resources and overcoming challenges
- Information Commissioner attended ICIC Executive Committee virtual meeting
- Information Commissioner and Investigation Officer LaKai Dill attended ICIC 14th annual conference in Philippines
- Court of Appeal issued costs ruling, Information Commissioner v Attorney General, [2023] CA (Bda) 11 Civ

### JULY 2023

- Investigation Officer presented for Future Leaders 2023 Summer Programme
- Moved into new space within expanded office area shared by Office of the Privacy Commissioner
- PIPA/PATI harmonising amendments passed

### SEPTEMBER 2023

- Caitlin Conyers joined as Relief Investigation Officer
- Held Information Commissioner's Quarterly Briefing for public authorities on processing PATI requests and denying frivolous or vexatious requests
- Information Commissioner presented to Sandys Rotary Club about PATI
- Launched ICO Blog on ico.bm
- Information Commissioner issued Right to Know Day video, *Start. Lead. Change. Use the PATI Act!*
- Hosted information booths on International Right to Know Day in City of Hamilton at Nelly's Walk and outside Hamilton MarketPlace
- Information Commissioner guested on *Miss Thang Show* and *The Daily Hour*
- Issued *Information Commissioner's Statement on Impact of Government's Cybersecurity Incident*
- Published *ICO Compliance Enforcement Policy and Handbook*



Information Commissioner Gutierrez and media personality Jamel Hardtman meet to prepare for the live broadcast of the *PATI & The People's Budget* held on 6 March 2024.



#### OCTOBER 2023

- LaKai Dill appointed as Acting Deputy Information Commissioner
- Information Commissioner issued *Interim Guidance: Continuity of PATI processes following September 2023 cybersecurity incident*
- Published updated *ICO Guidance: Operation of public authorities exemptions (section 30)*
- Published updated *ICO Guidance: The public interest test (section 21)*
- Information Commissioner and ICO officers attended 45th Global Privacy Assembly Conference, hosted by Office of the Privacy Commissioner

#### NOVEMBER 2023

- Information Commissioner and ICO officers attended virtual conference for Canada's access to information investigators
- Distributed 2023 ICO Annual Return package to public authorities
- Published updated *Guidance: ICO annual return (Part 2 and section 58(3))*

#### DECEMBER 2023

- Held Information Commissioner's Quarterly Briefing for public authorities on consulting with PATI requesters
- Information Commissioner attended ICIC Executive Committee virtual meeting

#### JANUARY 2024

- Acting Deputy Information Commissioner attended UK-based virtual training for practitioner certificate in freedom of information
- Information Commissioner attended ICIC Executive Committee virtual meeting

#### FEBRUARY 2024

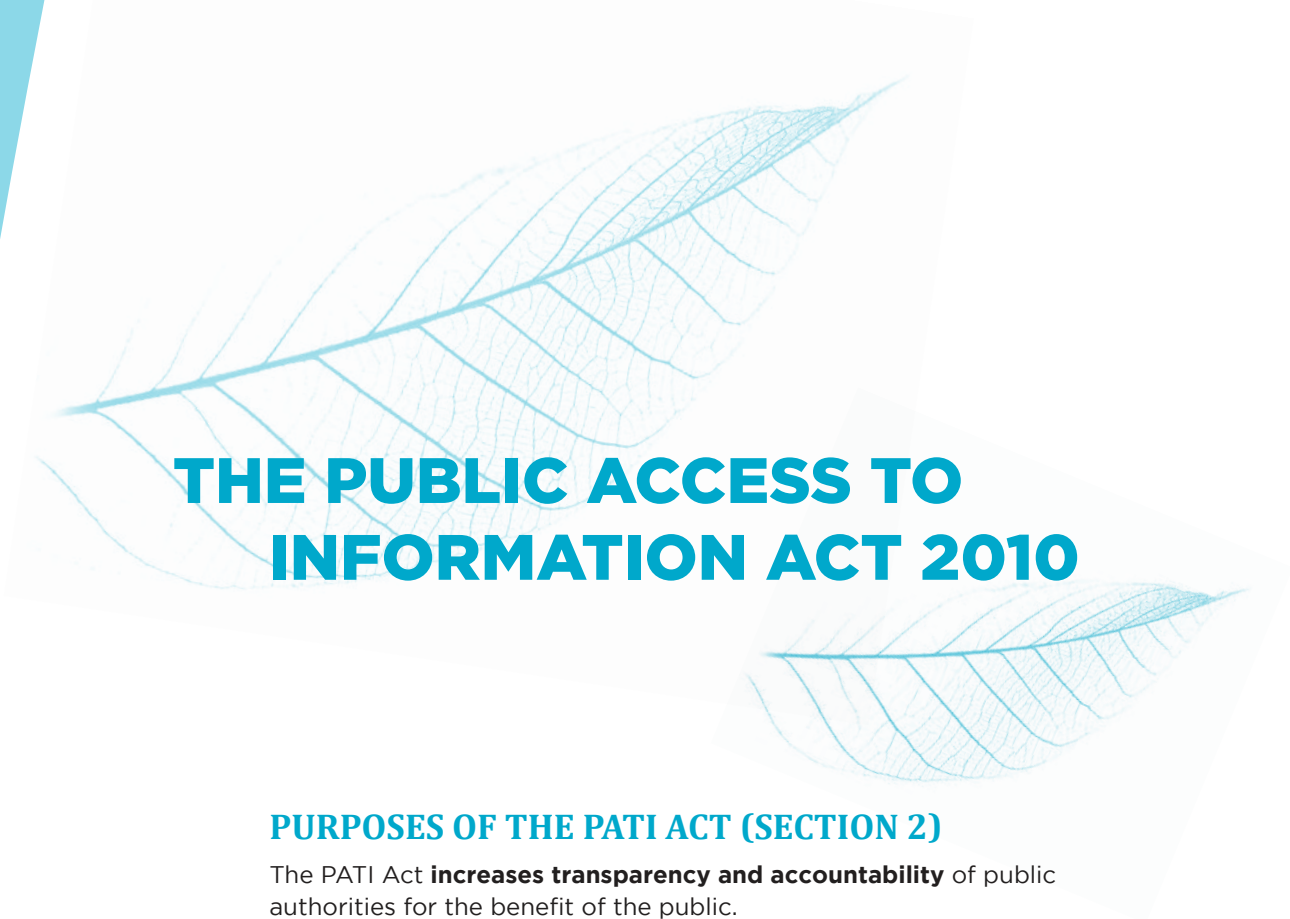
- Information Commissioner and Senior Investigation Officer attend virtual training for *Understanding FOI Requests from Journalists*
- Held Information Commissioner's Quarterly Briefing for public authorities on practical tips and expectations for reasonable searches following September 2023 cybersecurity incident

#### MARCH 2024

- Information Commissioner and Jamel Hardtman hosted second *PATI & the People's Budget*
- Information Commissioner attended ICIC Executive Committee virtual meeting



Information Commissioner Gitanjali Gutierrez and Investigation Officer LaKai Dill, attendees at the ICIC 14th annual ICIC conference in Philippines.



# 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**

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## 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 requester and any other personal information)**

**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 36 to 37.





**In clear and firm language, the Court of Appeal recognised and confirmed in their decision that the Information Commissioner’s independent review is crucial to safeguarding the public’s right under the PATI Act. The Information Commissioner has the authority to examine public records to ensure her review is meaningful, complete and effective. Anything less would render her review—and the public’s PATI rights – illusory. As Information Commissioner, I remain dedicated to fulfilling the mandate of the PATI Act. Along with the exceptional officers in the Information Commissioner’s Office, we will continue to strive to protect the purposes of the PATI Act and uphold the PATI rights of every Bermudian and resident. We welcome this decision by the Court of Appeal.**



*Information Commissioner Gutierrez, ICO Press Release: Court of Appeal affirms Information Commissioner’s power to review records, 28 March 2023*

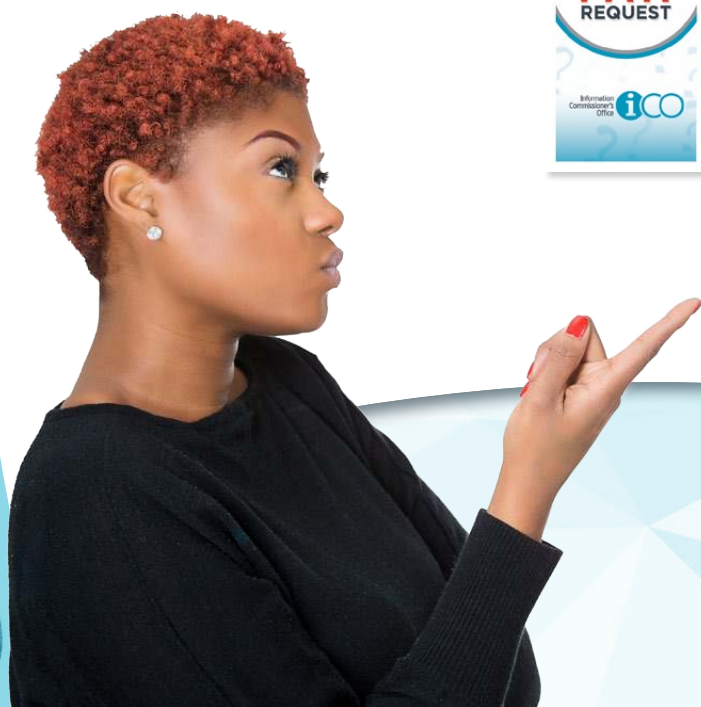
# HOW TO MAKE A PATI REQUEST

## 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.



## WHAT IS A 'RECORD'?

A 'record' under the PATI Act includes information recorded in any format. It can be papers, tapes, films 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](http://ico.bm).

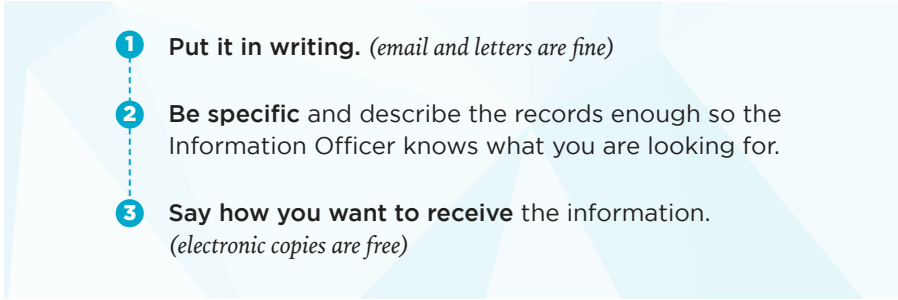
No need to worry if you are unsure. Public authorities have a duty under the PATI Act to assist requesters to find the right office or to transfer a request to the correct office.

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.

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### 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

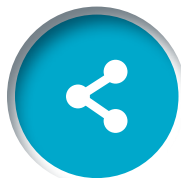
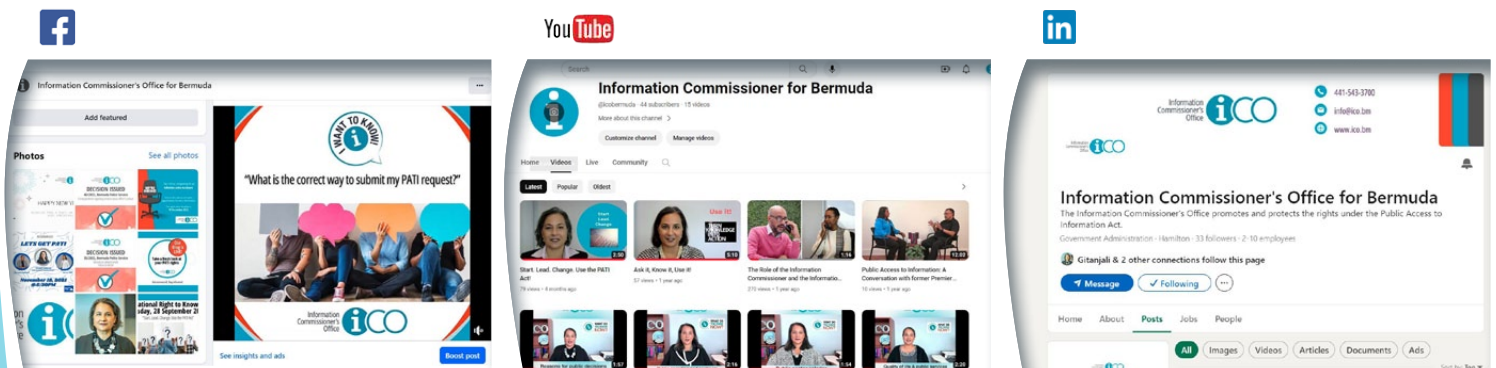
1 APRIL 2023 – 31 MARCH 2024

### RAISING PUBLIC AWARENESS

**The Information Commissioner has a statutory duty to raise awareness of the right to access public records.** The ICO achieves this through general public education initiatives, social media outreach, its website, as well as in-person, phone and email enquiries. While the number of in-person events hosted by the ICO has not reached their pre-pandemic levels, its online and social media outreach continue to expand. The ICO's work focuses on increasing Bermudians and other residents' understanding of the rights under the PATI Act and how to use them effectively.

### SOCIAL MEDIA OUTREACH

**The ICO's social media presence has expanded to include Facebook, Instagram and LinkedIn.** Posts include new Information Commissioner's decisions, press releases, publication of blog posts, tips for using PATI rights, upcoming events and more. All of the ICO's educational videos are also available on its YouTube channel.



**90,000+**  
reach for social  
media campaigns



**5,000+**  
engagements for  
social media posts

## EDUCATION INITIATIVES

The ICO's programmes this year included presentations by the Information Commissioner to the Rotary Club of Sandys and by Investigation Officer Ian Cameron to the Future Leaders Programme's summer 2023 cohort. For the second year, the ICO also held the successful *PATI & the People's Budget* virtual event with the Information Commissioner and entrepreneur and media personality Jamel Hardtman.



“Your expertise and knowledge on the impact of the PATI Act and the right to know and willingness to discuss how it has changed the relationship between the public and government and other public authorities, was both inspiring and enlightening for our members.”

*Shawn Lekki, Sandys Rotary Club*



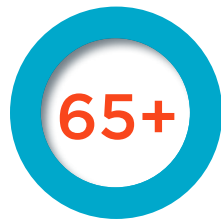
Top Left:  
Investigation Officers Ian Cameron and LaKai Dill provide a PATI overview to the Future Leaders Programme summer 2023 cohort.

Bottom Left:  
Promotional flyer for the *PATI & The People's Budget* 2024 programme.



*If you have a query about your PATI rights, email the ICO at [info@ico.bm](mailto:info@ico.bm) or call 543-3700. You can also drop by the office in the Maxwell Roberts Building at One Church Street in the City of Hamilton.*

The ICO also engages in one-on-one education through enquiries. It receives emails and phone calls from individuals asking how to make a PATI request or wanting to learn how to ask for a review if they disagree with the decision on their PATI request. The ICO also receives enquiries from public authorities to understand their duties and the provisions of the PATI Act.

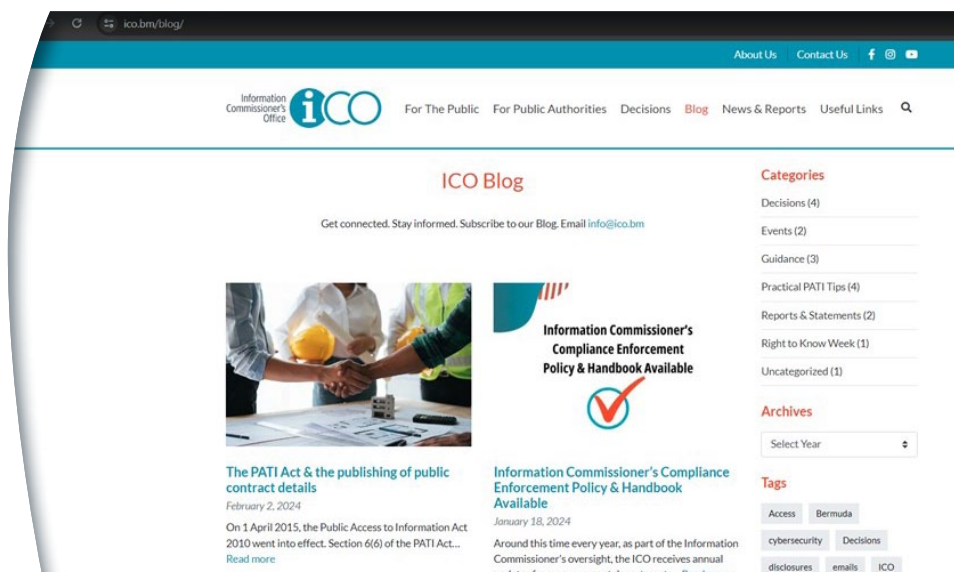


**enquiries responded to by the ICO from the public and public authorities**

## WEBSITE RESOURCES

**The ICO's website continues to offer quick access to a variety of resources for the public.** It includes flyers (in English and Portuguese) and videos with information on how to make a PATI request. A searchable listing of public authorities that fall under the PATI Act is available, with the contact details for Information Officers and public authorities' information statements. The ICO also publishes copies of the Information Commissioner's decisions, its press releases and other public awareness videos.

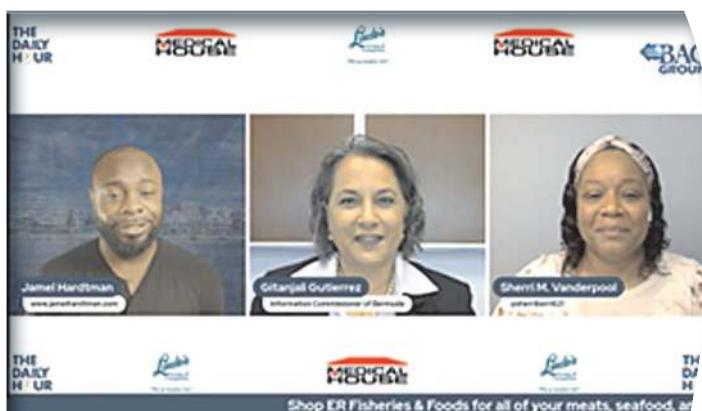
During 2023, the ICO published its final Monthly Roundup newsletter in July, with prior issues (January 2018 – July 2023) still accessible on ico.bm. The newsletter was replaced by the ICO's launch of its blog on ico.bm during Right to Know Week. The new blog offers more user-friendly, indexed content about ICO-related updates, PATI tips and articles.



As a dynamic resource with timely updates, the ICO's website is accessed on a regular basis by users. This reporting period, the ICO's website received over 27,800 views from over 6,360 users, with an average website session lasting 2:55 minutes. This year, the majority of users were new users (50.23%), compared to 99% in 2022.

## RIGHT TO KNOW WEEK 2023

The ICO commemorated its 9th International Right to Know Day on 28 September with the theme **Start. Lead. Change. Use the PATI Act!**. Information Commissioner Gutierrez's annual Right to Know Day message recognised the public's use of their PATI rights to drive the changes that they wished to see in their schools, businesses, families and communities. She commended members of the public who have bravely exercised their right to know and have used the disclosures given to them. Information Commissioner Gutierrez also held engaging media interviews on Power 95's Miss Thang Show and on The Daily Hour.



The Daily Hour host Jamel Hardtman, co-host Sherri Vanderpool and Information Commissioner Gutierrez.

On International Right to Know Day, the ICO hosted two information booths in the City of Hamilton outside of Hamilton MarketPlace and on Nelly's Walk. This offered an invaluable opportunity for the public to talk to the ICO's team and learn firsthand how to use their PATI rights.



International Right to Know Day booth.

**On International Right to Know Day, 28 September, Information Commissioners, the public, human rights advocates, the media and public bodies throughout the world celebrate the right to access public information and the principles of openness, accountability and transparency.**

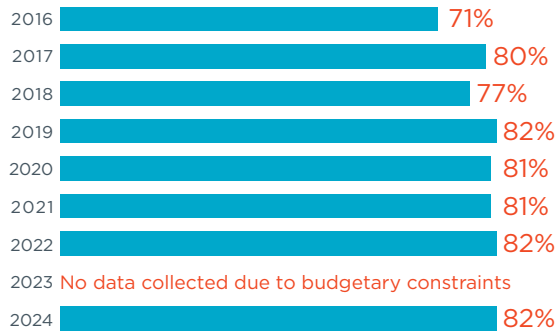
## MONITORING PUBLIC AWARENESS

**The ICO conducted its annual public awareness survey in February 2024.** The ICO first conducted this survey in February 2016 to obtain baseline data of the impact of the ICO's work at the conclusion of its initial year, the 2015-2016 fiscal year. The data are collected each February through a national standalone survey with a sample size of 400 and a 5% margin of error at a 98% confidence level.

The data collected year over year since 2016 have allowed the ICO to assess whether its education and outreach efforts are maintaining or improving the public's awareness of PATI rights. Importantly, this information also assists the ICO in identifying the groups within Bermuda that may be most in need of the ICO's proactive outreach efforts to increase their understanding of their PATI rights.

This year, 82% of the respondents had heard of the PATI Act, consistent with 82% in 2022, and 86% of respondents stated that the right to access public records is important to them, compared to 80% of respondents in 2022. These high levels of awareness are consistent with the data from prior years, as shown in the charts below.

### PERCENTAGE OF RESPONDENTS WHO HAVE HEARD OF THE PATI ACT

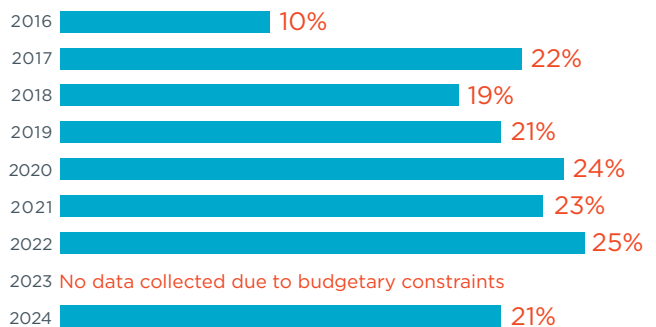


### PERCENTAGE OF RESPONDENTS WHO BELIEVE THE RIGHT TO ACCESS PUBLIC RECORDS IS IMPORTANT TO THEM



The right to access public records has become an ingrained and important part of citizens' relationships with government and other public authorities. Since the ICO's 2016 public awareness survey, the percentage of respondents who have asked a public authority for a copy of a record has more than doubled, from 10% in 2016 to 21% in 2024, with a high of 25% in 2022.

### RESPONDENTS WHO HAVE ASKED A PUBLIC AUTHORITY FOR A RECORD



## PROVIDING GUIDANCE TO PUBLIC AUTHORITIES

The Information Commissioner's mandate includes providing public authorities with guidance on how to meet their obligations under the PATI Act. The ICO seeks to achieve this through issuing guidance notes, publishing informal practice tips on the ICO's blog and social media, responding to enquiries, and holding Quarterly Briefings for public authorities to discuss learnings from recent Information Commissioner's reviews and decisions.

Upon request following their successful Information Commissioner's Quarterly Briefing in March 2023, Acting Deputy Information Commissioner Answer Styannes and Investigation Officer LaKai Dill presented a programme for public authorities, *Introduction to practical tips for conducting a search*. Hosted at the Bermuda College in April 2023, the feedback was very positive.



“ 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.

Investigation Officer LaKai Dill presenting at Bermuda College during a programme for public authorities.

“ I appreciate the guidance on enhancing our PATI process through delegation and further education. **Your advice is invaluable, and we look forward to implementing these recommendations.** ”

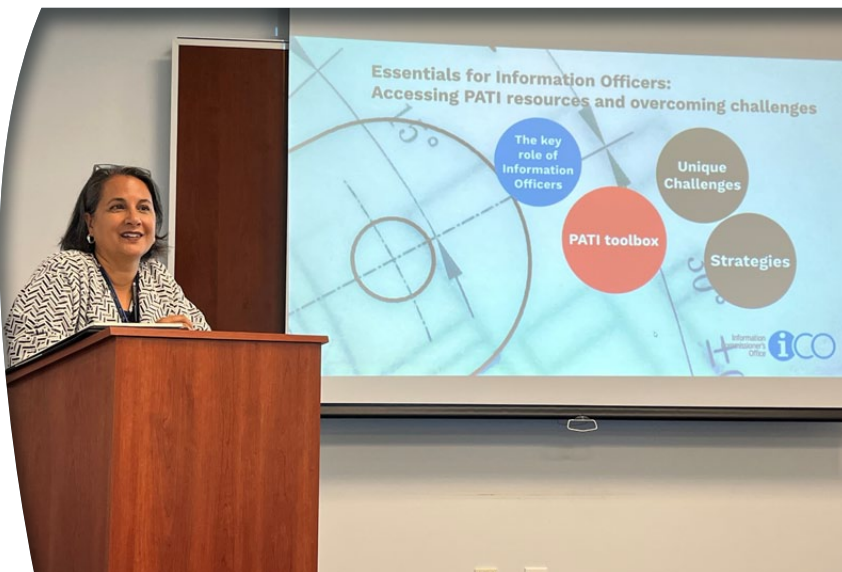
*Public authority's Information Officer*

**This year, the ICO published the following new or updated guidance notes:**

- *Interim Guidance: Continuity of PATI processes following September 2023 cybersecurity incident* (October 2023)
- *Guidance: Operation of public authorities exemptions (section 30)* (updated October 2023)
- *Guidance: The public interest test (section 21)* (updated September 2023)
- *Guidance: ICO Annual Return (Part 2 and section 58(3))* (updated November 2023)

**The Information Commissioner's Quarterly Briefings focused on enhancing critical skills for Information Officers and others involved in the PATI process** to strengthen the effectiveness of their interactions with PATI requesters and to understand how to overcome challenges that may arise while processing complex PATI requests. Specifically, the briefing topics were:

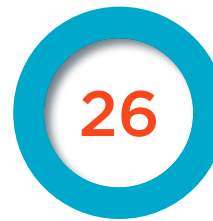
- Practical tips for consulting with PATI requesters
- Basics of processing a PATI request
- Section 16(1)(e), administrative denials for frivolous or vexatious requests
- Essentials for Information Officers: Accessing PATI resources and overcoming challenges



Information Commissioner Gutierrez presenting at one of the Information Commissioner's Quarterly Briefings for public authorities.



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



different public authorities were represented.

In addition, the February 2024 Quarterly Briefing covered the topic of conducting a reasonable search, which was offered as a refresher to new and returning Information Officers following the Government's cybersecurity incident in September 2023.

## CONSULTATIONS

As part of the Information Commissioner's mandate to promote public access to records and the purposes of the PATI Act, the ICO provides formal and informal consultation and engages with stakeholders and policymakers **to safeguard and strengthen access to public records in Bermuda.**

The ICO continued to work with the Office of the Privacy Commissioner and the Cabinet Office's PATI/PIPA Unit to provide recommendations on the legislation to harmonise the PATI Act and the Personal Information Protection Act 2016. These efforts supported the passage of the amendments in July 2023.

# Positive Feedback

## ON THE INFORMATION COMMISSIONER'S QUARTERLY BRIEFINGS

“ | Well organised and engaging “ | Easy to follow and understand

“ | Excellent application of the Act in the examples “ | Overcoming request challenges

“ | I thoroughly enjoyed it and came away from it with a better understanding of the process

“ | Interesting “ | As always very informative, practical and useful information

“ | Strategies we can put in place to support our Information Officers

“ | Networking with other Information Officers “ | Resourceful

“ | Great information “ | Very useful topic and interaction

“ | Very clear and useful. Many good reminders “ | Well done

“ | Engagement with attendees about their experiences

“ | Knowledgeable presenter “ | Very beneficial as usual

“ | Clear presentation with illustrations and examples

“ | Q&A with attendees “ | Really good use of my morning

“ | Concise information “ | Open and frank discussion

“ | Learning more about challenges of other Information Officers

“ | Honest and open discussion on a difficult topic “ | Ease of reference

“ | Networking with other Information Officers “ | Informative and insightful

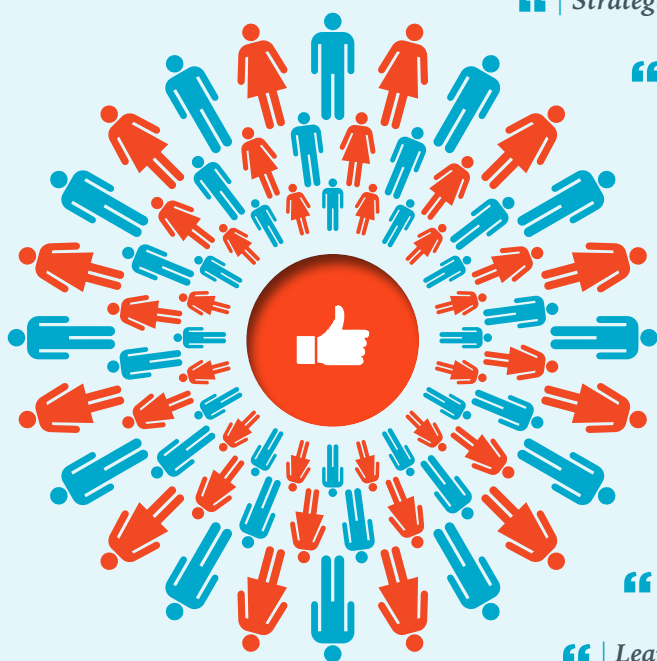
“ | Presentation was clear and easy to follow “ | Very informative “ | Very useful

“ | Engaging with Information Commissioner on matters relevant to completing requests

“ | Excellent “ | I very much enjoyed the briefing and feel the information shared very helpful

“ | Audience interaction “ | I found it very engaging “ | Clarification of the process

“ | Opportunity to interact with other officers “ | Relevant and topical “ | Thank you



Quarterly Briefing slides (including presenter's notes) are available on [ico.bm](https://ico.bm).

# ENFORCING THE RIGHT

1 JANUARY 2023 – 31 DECEMBER 2023



## 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.bm](https://ico.org.uk/for-the-public/pati/pati-reviews-policy-and-handbook).

## THE INFORMATION COMMISSIONER'S 2023 REVIEWS



new applications for an  
Information Commissioner's  
independent review



increase in caseload in 2023  
compared to 2022

### THE INFORMATION COMMISSIONER'S TOTAL CASELOAD FOR 2023

On 1 January 2023, the ICO carried over 53 open reviews from previous years. This brought the ICO's total caseload in 2023 to 107 applications.

|                                             | 2020      | 2021      | 2022      | 2023       |
|---------------------------------------------|-----------|-----------|-----------|------------|
| <b>CASELOAD</b>                             |           |           |           |            |
| Reviews brought forward from previous years | 33        | 33        | 43        | 53         |
| New applications                            | 21        | 39        | 54        | 54         |
| <b>Total</b>                                | <b>54</b> | <b>72</b> | <b>97</b> | <b>107</b> |

### 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 has passed since then.

|                                              | 2020      | %          | 2021      | %          | 2022      | %          | 2023      | %          |
|----------------------------------------------|-----------|------------|-----------|------------|-----------|------------|-----------|------------|
| <b>PROPORTIONS OF NEW VALID APPLICATIONS</b> |           |            |           |            |           |            |           |            |
| Valid                                        | 19        | 90         | 35        | 90         | 50        | 93         | 50        | 93         |
| Invalid                                      | 2         | 10         | 4         | 10         | 4         | 7          | 4         | 7          |
| <b>Total</b>                                 | <b>21</b> | <b>100</b> | <b>39</b> | <b>100</b> | <b>54</b> | <b>100</b> | <b>54</b> | <b>100</b> |

## 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 reviews involved a number of different exemptions at the validation stage, with the exemptions for commercial information, personal information and law enforcement cited most often.

|                                                             | 2020      | 2021      | 2022      | 2023      |
|-------------------------------------------------------------|-----------|-----------|-----------|-----------|
| <b>EXEMPTIONS CHALLENGED IN NEW CASES</b>                   |           |           |           |           |
| s.22 Health or safety                                       | 0         | 0         | 1         | 0         |
| s.23 Personal information                                   | 1         | 5         | 12        | 8         |
| s.25 Commercial information                                 | 0         | 2         | 8         | 11        |
| s.26 Information received in confidence                     | 2         | 3         | 8         | 6         |
| s.27 Cabinet documents                                      | 0         | 0         | 5         | 0         |
| s.28 Ministerial responsibility                             | 1         | 0         | 0         | 2         |
| s.29 Deliberations of public authorities                    | 2         | 0         | 5         | 2         |
| s.30 Operations of public authorities                       | 1         | 1         | 10        | 4         |
| s.31 Financial and economic interests                       | 0         | 0         | 2         | 1         |
| s.32 National security, defence and international relations | 0         | 0         | 0         | 2         |
| s.33 Governor's responsibilities                            | 0         | 0         | 2         | 0         |
| s.34 Law enforcement                                        | 2         | 5         | 18        | 7         |
| s.35 Legal professional privilege                           | 1         | 0         | 3         | 3         |
| s.36 Contempt of court and parliamentary privilege          | 0         | 0         | 1         | 0         |
| s.37 Disclosure prohibited by other legislation             | 2         | 1         | 3         | 3         |
| s.38 Non-disclosure of existence of a record                | 0         | 0         | 1         | 1         |
| <b>Total</b>                                                | <b>12</b> | <b>17</b> | <b>79</b> | <b>50</b> |

The ICO continued to see a trend of more challenges to administrative denials than in 2020, 2021 and 2022. A more concerning trend is emerging, though, of continued increases in the number of applications challenging public authorities' failure to respond to PATI requests. This involves a public authority not meeting its most basic obligation to respond to a request for an internal review for a PATI request. These reviews are discussed in more detail on page 32.

|                                                                                         | 2020      | 2021      | 2022      | 2023      |
|-----------------------------------------------------------------------------------------|-----------|-----------|-----------|-----------|
| <b>ADMINISTRATIVE DENIALS AND OTHER ISSUES CHALLENGED IN NEW CASES</b>                  |           |           |           |           |
| s.4 Inapplicability of PATI Act                                                         | 2         | 1         | 5         | 3         |
| Failure to decide                                                                       | 4         | 14        | 16        | 24        |
| s.16 Administrative denial                                                              | 11        | 7         | 12        | 14        |
| Fees charged                                                                            | 0         | 0         | 0         | 0         |
| Reasonableness of search                                                                | 3         | 5         | 0         | 1         |
| Other (e.g., manner of access given, insufficient assistance provided, transfers, etc.) | 1         | 2         | 3         | 8         |
| <b>Total</b>                                                                            | <b>21</b> | <b>29</b> | <b>36</b> | <b>50</b> |

## APPLICATION OUTCOMES

Of the 107 applications pending in 2023, the ICO closed 66 applications, or 62% of them. With the ICO's increased capacity, it also closed 50% more applications in 2023 than in 2022. The Information Commissioner issued 55 formal decisions in 2023, as compared to 34 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.

|                                    | 2020     | 2021     | 2022     | 2023     |
|------------------------------------|----------|----------|----------|----------|
| REASON FOR CLOSURE IN EARLY STAGES |          |          |          |          |
| Invalid                            | 2        | 4        | 4        | 4        |
| Early resolution                   | 0        | 0        | 0        | 0        |
| Abandoned/Withdrawn                | 0        | 0        | 2        | 1        |
| <b>Total</b>                       | <b>2</b> | <b>4</b> | <b>6</b> | <b>5</b> |

### 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.

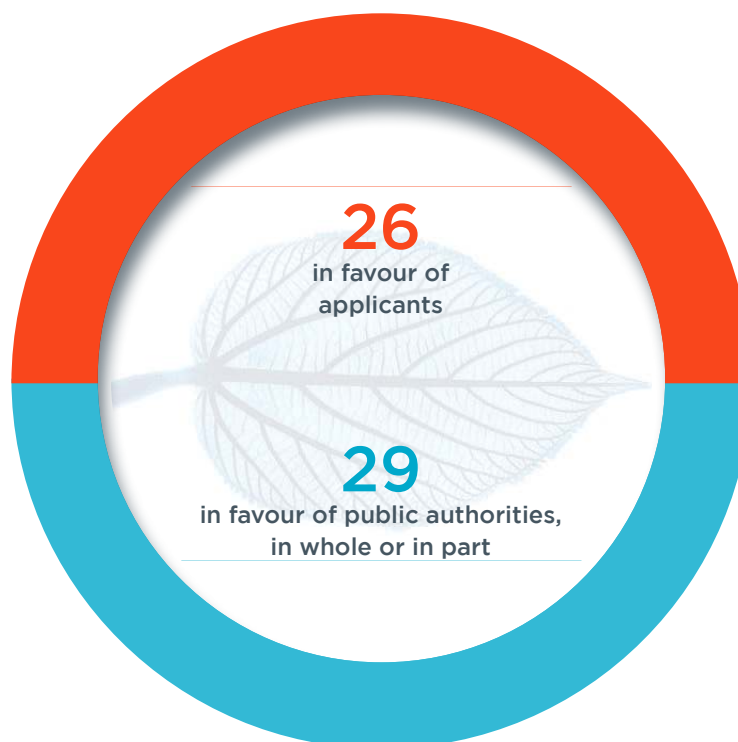
|                                         | 2020     | 2021     | 2022     | 2023     |
|-----------------------------------------|----------|----------|----------|----------|
| REASON FOR CLOSURE DURING INVESTIGATION |          |          |          |          |
| Resolved                                | 2        | 1        | 4        | 6        |
| Abandoned/Withdrawn (other)             | 0        | 0        | 0        | 0        |
| <b>Total</b>                            | <b>2</b> | <b>1</b> | <b>4</b> | <b>6</b> |

## INFORMATION COMMISSIONER'S 2023 DECISIONS

Of the 55 decisions issued, the Information Commissioner decided 26 of them for the applicant. In the remaining 29 decisions, the Information Commissioner upheld the public authority's decision in whole or in part.

|                      | 2020      | 2021      | 2022      | 2023      |
|----------------------|-----------|-----------|-----------|-----------|
| DECISION OUTCOMES    |           |           |           |           |
| For applicant        | 4         | 14        | 17        | 26        |
| For public authority | 8         | 3         | 5         | 14        |
| Partially upheld     | 5         | 5         | 12        | 15        |
| <b>Total</b>         | <b>17</b> | <b>22</b> | <b>34</b> | <b>55</b> |

### DECISIONS ISSUED BY THE INFORMATION COMMISSIONER



## JUDICIAL REVIEWS

On 24 March 2023, the Court of Appeal issued its historic first decision under the PATI Act, *Information Commissioner v Attorney General*, [2023] CA (Bda) 6 Civ, finding in favour of the Information Commissioner. **The President Sir Christopher Clarke, joined by Justices Sire Maurice Kay and Geoffrey Bell, affirmed that the Information Commissioner has the power to examine all records and any other information necessary to ensure a meaningful and effective independent review of a public authority's denial of a PATI request—and that this is an essential aspect of the PATI Act's “sophisticated review system”, which safeguards the public's PATI rights.**

The Court of Appeal rejected arguments that a public authority could refuse to let the Information Commissioner examine a record which a public authority concluded fell outside the scope of the PATI Act under section 4(1), stating that this construction “borders on the absurd”. The Court of Appeal's costs ruling, [2023] CA (Bda) 11 Civ, also clarified the important, practical issue that the Information Commissioner could recover the substantial legal costs for the litigation from the Attorney General's Chambers, despite the fact that both entities are funded from the Government's Consolidated Fund. Together, these rulings strengthen the capacity of the Information Commissioner to compel the information necessary for them to conduct an independent review and the right to recover legal costs from public authorities.

The Information Commissioner's Decisions 18/2022 and 37/2023, *Ministry of Health Headquarters*, explained the judicial review's background and outcome in more detail.

“**The manifest purpose of the Act was 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”, to increase transparency; and to eliminate unnecessary secrecy and to increase the accountability of public authorities. These purposes will be defeated if public authorities can prevent production of documents or any review of a decision to do so simply by the relevant authority saying that they fall within section 4 (1) (b) [removing them from the scope of the PATI Act] and not within 4 (2) [the exception that brings records within the PATI Act]. Any review without sight of the documents would be, in many cases, illusory or ineffective.**”

*President Sir Christopher Clarke in Information Commissioner v Attorney General [2023] CA (Bda) 6 Civ, at paragraph 77.*



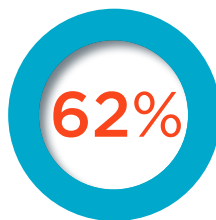
ICO team with members of their legal counsel Monica Carss-Frisk KC, Blackstone Chambers and Warren Bank, Counsel, Cox Hallett Wilkinson Limited after the argument in [Information Commissioner v Attorney General](#) [2023] CA (Bda) 6 Civ.

## 2023 DECISION HIGHLIGHTS

### AN ICO MILESTONE - HIGHEST NUMBER OF DECISIONS ISSUED

The Information Commissioner reached a milestone for the office's highest count of independent review decisions, with a total of 55 formal decisions issued in 2023. Of those, 35 decisions considered the head of authority's denial of access to records (or other substantive denial). The other 20 decisions resolved a complaint that the head of authority had missed their deadline to issue a response to an internal review request. **This accomplishment reflects a concentrated effort by the Information Commissioner and the ICO's officers to reduce its long-standing backlog of pending reviews.**

**55** DECISIONS ISSUED



62% increase in Decisions issued, compared to 2022

## PATI REQUESTS TOUCHING UPON DAILY LIFE

The PATI request topics in the Information Commissioner's 35 substantive decisions were varied. **Many of these 2023 decisions reflected a wide range of topics that directly affected individuals' personal, community or work life.** Requesters sought greater transparency through records about public education consultations in two decisions involving the Ministry of Education Headquarters: Decision 55/2023 (on a request by the West End Warriors group for records about the July 2021 Sandys parish school decision), and Decision 24/2023 (on records of submissions for Plan 2022, the Department of Education's community-developed strategic plan for education reform). Decision 07/2023 involved a request made to the Department of Works & Engineering for inspection and incident reports about a Tribe Road, along with any records of complaints about its conditions. Two other decisions sought greater clarity about the Department of Environment & Natural Resources' regulatory activities. In Decision 06/2023, the requester asked the Department for its registers of shipwrecks and items recovered from wrecks, and a listing of finders of wrecks around Bermuda. In Decision 52/2023, the requester sought information about the Department's monitoring practices for long-line fishing vessels.



Decisions 24/2023 and 55/2023 involved the Government's education reform activities.



The disclosure of inspection, incident, conditions and complaint records for a Tribe Road was discussed in Decision 07/2023.



Decision 06/2023 provided fuller information about the Department of Environment & Natural Resources' oversight of the registry of shipwrecks and items recovered from wrecks around Bermuda.



The Department of Environment & Natural Resources' monitoring of the practices of long-line fishing vessels was explained in Decision 52/2023.

As in past years, a number of decisions focused on human resource matters, including: requests for probation-related emails from the Bermuda Police Service, in Decisions 14/2023 and 34/2023; records from the Department of Child and Family Services related to administrative leave and disciplinary actions, in Decisions 51/2023 and 54/2023; and a misconduct allegation report from the Ministry of Social Development & Seniors Headquarters and the Ministry of Legal Affairs & Constitutional Reform Headquarters, in Decisions 01/2023 and 02/2023.

In many of these reviews, the requesters did not receive any or all of the records they had hoped for because the records, as requested, did not exist or were exempt from public disclosure. **Through the PATI process, however, the requesters (and public) learned more about these public authorities' decision-making processes and activities—a key purpose of the PATI Act in section 2.**

## PUBLIC SPENDING AND GOOD GOVERNANCE

### **Significant decisions in 2023 sought greater transparency and accountability for public spending or finance decisions and good governance.**

These included requests to the Office of the Tax Commissioner seeking records about activities to recover tax debts owed to the government (Decision 23/2023) and about entities liable to pay betting duty (Decision 42/2023). Other requests sought information about specific public spending or finance decisions, such as the board administration and member payments for the Bermuda Tourism Authority (Decision 55/2023) and the acquisition and sale of the 'Laughing Waters' property (Decision 41/2023) by the Bermuda Housing Corporation. Additional decisions involved issues of national impact, including: the Premier and Finance Ministers' correspondence related to Gencom and its principals (Decision 08/2023, Ministry of Finance Headquarters, and Decisions 49/2023 and 50/2023, Cabinet Office); records related to the payment agreement between the Government and the Brown-Darrell Clinic and Bermuda Health Care Services (Decision 37/2023, Ministry of Health Headquarters); and records on the Government's relationship with MM&I Holdings (Decisions 46/2023 and 47/2023, Cabinet Office).



Decision 42/2023 involved the Office of the Tax Commissioner's disclosure of the total amount of betting duty owed by betting shops year over year.

### **'FAILURE TO DECIDE' REVIEWS**

Compared to prior years, a lower portion of the Information Commissioner's 2023 decisions were on 'failure to decide' reviews, which challenge a head of authority's failure to issue the public authority's internal review decision by the statutory deadline. Instead, almost two-thirds of the 2023 decisions involved the Information Commissioner's review of a head of authority's substantive decision on whether to disclose records in response to a PATI request (or other substantive denial), compared to just over half of the decisions in 2022. This was an important shift in the Information Commissioner's decisions in 2023.

Still, the number of 'failure to decide' reviews remained high. In October 2023, the Information Commissioner expressed an ongoing concern about public authorities' capacity to meet their most basic PATI duties, as shown by the 'failure to decide' applications for review received up to that point in 2023. Between June and August 2023, the Information Commissioner issued all but 6 of their 20 'failure to decide' decisions for the year. **These 'failure to decide' decisions highlight the ongoing need for good PATI practices and adherence to the Minister's Practice Code on the Administration of the PATI Act to ensure that, at a minimum, PATI requesters receive a decision on their PATI requests.**

## LIMITS OF PUBLIC ACCESS TO INFORMATION

Several 2023 decisions by the Information Commissioner considered the limits on the scope of the PATI Act. Section 4(1)(b) of the PATI Act removes records related to the constitutional or statutory functions of certain public authorities, such as the Attorney Generals' Chambers, Auditor General or Ombudsman. The records related to their general operations, however, still come within the scope of the PATI Act by virtue of section 4(2).

Following the Court of Appeal's decision in Information Commissioner v Attorney General, the Information Commissioner was finally able to conclude their independent review of the Ministry of Health Headquarters' reliance on section 4(1)(b) for refusing parts of a 2018 PATI request, which sought records about the Government's 2017 settlement agreement on diagnostic imaging service payments. Decision 37/2023 reversed the Ministry Headquarters' refusal in part where the Information Commissioner concluded that section 4 did not apply, while upholding its decision that other records fell outside the PATI Act's scope. The Ministry Headquarters complied with the Information Commissioner's Order to process records afresh and issue a new decision on them, ultimately deciding to disclose most records in December 2023.



Decision 37/2023 addressed records related to the Government's 2017 settlement agreement about diagnostic imaging service payments.

Two other noteworthy 2023 decisions dealt with requests for records that, by virtue of section 4(1)(a), were excluded from PATI's scope. In Decision 32/2023, Ministry of Economy & Labour Headquarters, the requester had asked for any non-anonymised versions of the Employment & Labour Relations Tribunal's public decisions. The Information Commissioner upheld the Ministry Headquarters' refusal in full, agreeing that issuing those decisions fell squarely within the Tribunal's quasi-judicial functions, and therefore were excluded from the PATI Act's scope under section 4(1)(a). In its submissions to the Information Commissioner, the Ministry Headquarters usefully explained its revised approach to asking parties for consent to publish non-anonymised Tribunal decisions.



Decision 32/2023 upheld the refusal of non-anonymised versions of the Employment & Labour Relations Tribunal's public decisions, but explained how the Tribunal's publication practices had changes since the PATI request.

In Decision 04/2023, Department of Health, the outcome favoured both requester and public authority. The requester had asked for specific health and safety reports and details on any complaints to a hospital laboratory. The Acting Information Commissioner accepted part of the Department's reasoning, that the main reports formed part of evidence in a pending legal proceeding and therefore were excluded from the PATI Act's scope under section 4(1)(a). But the Acting Information Commissioner reversed the Department's refusal about any follow-up report and complaints, finding the same reasoning was not justified, and ordered the Department to process afresh those parts of the PATI request.

Section 37 of the PATI Act also preserves existing secrecy provisions by allowing a public authority to refuse access to records when disclosure is prohibited by another statute. As an 'absolute' exemption, a public authority does not need to consider whether the balance of the public interest still requires disclosure. This means that public authorities may deny public access under section 37 even when it would be inconsistent with the PATI Act's purposes, such as to eliminate unnecessary secrecy.

Decision 38/2023, Department of Child & Family Services, was the Information Commissioner's first decision that found the secrecy provision in the Children Act 1998 was a statutory prohibition on disclosure triggering the exemption in section 37 of the PATI Act. The Information Commissioner stated that "the plain reading of section 37 of the PATI Act and section 11 of the Children Act leads to an outcome that appears contrary to the purpose of the PATI Act" and "allows for unnecessary secrecy surrounding the care, protection and treatment of one of our country's most vulnerable populations". The Information Commissioner reached the same outcomes

in Decisions 44/2023 and 45/2023, involving similar PATI requests seeking access to the Department's records on placements of Bermuda's young people in residential treatment centres overseas. **In these decisions, the Information Commissioner noted that the plain language of section 37 transforms a confidentiality provision, essentially intended as a condition of employment for an employee, into a statutory prohibition under the PATI Act that prevents a public authority from disclosing records under the PATI Act, even when those records may otherwise appropriately be disclosed. These unintended consequences make section 37 ripe for legislative attention to further the purposes of the PATI Act.**

**“ A number of Bermuda laws prevent certain information from being released to the public. The Government intends to conduct a thorough review of such legislation to determine which of these laws should remain in place, and which should be amended or repealed if they are no longer necessary and not in keeping with the spirit of PATI legislation. ”**

*Public Access to Information: A Discussion Paper Presented to the Legislature by the Premier  
The Honourable W. Alexander Scott, JP, MP (2005)*



The Information Commissioner's **decisions are published on ico.bm**, which includes a monthly dashboard tracking the number of applications received by their current disposition.

## COMPLIANCE OVERSIGHT

The PATI Act significantly strengthens access to public information by placing obligations on 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:

|                                         |                                                                                                        |                                                                     |                                                                                                    |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <b>Publish an Information Statement</b> | <b>Maintain a PATI request log (without any personal information) readily available for the public</b> | <b>Have quarterly expenditures readily available for the public</b> | <b>Gazette all of their contracts for goods or services with a total value of \$50,000 or more</b> |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|

### 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 their annual report. The public authorities' PATI reports must include the number of PATI requests they received, the number of times various exemptions were involved, and the disposition of the PATI requests.

## 2023 ICO ANNUAL RETURN

The ICO initiated its Annual Return in 2018 as a systematic and fair tool for tracking public authorities' compliance with these requirements in the PATI Act, including the requirement to gazette qualifying contracts. **Importantly, public authorities are aware as they procure goods and services that the details of qualifying contracts, including consultant contracts, must be gazetted at least on an annual basis.** Requiring this information to be made public, without the need for a PATI request, encourages good decision making and practices concerning public procurement.

As described in pages 38 to 42, public authorities' reports on the number of PATI requests they received enable the Information Commissioner, public authorities and the public to better understand the use and administration of the PATI Act.

The Information Commissioner was pleased to report that nearly all public authorities submitted their ICO 2023 Annual Return, although there was a slight percentage increase in those that did not, as compared to 2022.

| ICO ANNUAL RETURN  | 2022                      |                   | 2023                      |                   |
|--------------------|---------------------------|-------------------|---------------------------|-------------------|
|                    | No. of Public Authorities | % of Total Number | No. of Public Authorities | % of Total Number |
| Timely submissions | 121                       | 64.7              | 105                       | 55.3              |
| Late submissions   | 56                        | 29.9              | 73                        | 38.4              |
| Failed to submit   | 6                         | 3.2               | 2                         | 1.1               |
| Under review       | 4                         | 2.1               | 10                        | 5.3               |
| <b>Total</b>       | <b>187</b>                | <b>100</b>        | <b>190</b>                | <b>100</b>        |

Noncompliance with the requirement in section 58(3) to submit a PATI report 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, rent, IT services, repairs, construction, and more. These gazette notices are available on the Government's website in the electronic Official Gazette and in paper copies at the National Library and the Archives.

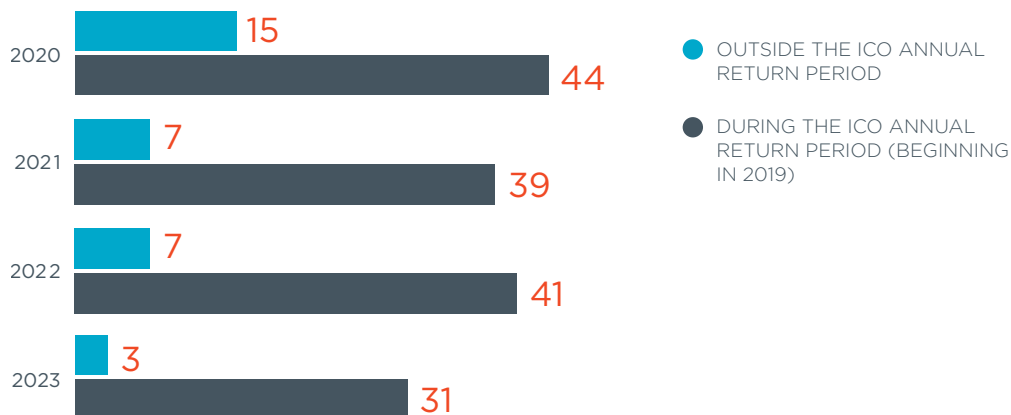
After receiving feedback from public authorities, the ICO's updated guidance on the ICO Annual Return process discussed how public authorities should calculate their costs for multi-year contracts or contracts with an 'evergreen clause' (which allows an automatic extension of a contract without an amendment). The ICO received helpful consultation with the Government's Office of Project Management and Procurement on this addition. The ICO's guidance was enhanced by the OPMP's professional knowledge and technical expertise concerning best practices for public procurements and transparency.

**The mission of the Office of Project Management and Procurement is to provide oversight and guidance for government departments on their project management and procurement activities, to ensure transparency and value for money in public spending.**

*Approved Estimates of Revenue and Expenditure for the Year 2023/2024 (Budget Book), page B-68*

During this ICO Annual Return period (November 2023 – February 2024), public authorities gazetted 31 notices detailing contracts with a total value of \$50,000 or more. In comparison, only 3 gazette notices were issued in 2023 outside the ICO Annual Return process, between 1 March 2023 and 20 November 2023 (i.e. after the prior 2022 Annual Return process concluded).

### 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 the public's ability to hold public authorities accountable for decisions concerning public expenditures.**

# 2023 PUBLIC AUTHORITIES' STATISTICS

1 JANUARY 2023 – 31 DECEMBER 2023

Section 58(3) of the PATI Act requires public authorities to submit their annual PATI report to the Information Commissioner for publication. The ICO Annual Return includes a form for public authorities to record and submit their PATI report to the Information Commissioner.

| 2023 PUBLIC AUTHORITIES' REPORTS      | Number of Public Authorities | % of Total |
|---------------------------------------|------------------------------|------------|
| Received PATI requests                | 49                           | 26         |
| Did not receive PATI requests         | 130                          | 68         |
| No PATI request information available | 1                            | 1          |
| Under review                          | 10                           | 5          |
| <b>Total</b>                          | <b>190</b>                   | <b>100</b> |

## NONCOMPLIANCE WITH SECTION 58(3) REPORTING

Unlike with other requirements in the PATI Act, the Information Commissioner lacks order-making power to compel compliance with the requirement in section 58(3) of the PATI Act for public authorities to submit their PATI request reports for the Information Commissioner's Annual Report.

After unsuccessful efforts to encourage compliance with section 58(3), the Information Commissioner notified the 2 public authorities below that they would be listed in the 2023 Information Commissioner's Annual Report as noncompliant with section 58(3) of the PATI Act and the submission of their ICO 2023 Annual Return:

- Board of Trustees of the Golf Courses\*
- Department of Corrections\*\*

\*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.

## 2023 PATI REQUESTS

Public authorities reported that 189 new PATI requests were made for access to records under section 13 of the PATI Act. Another 28 PATI requests were reported as pending at the end of 2022 and carried over to 2023. The public authorities with the highest number of new 2023 PATI requests reported to the ICO were the Bermuda Police Service (99 requests) and the Ministry of Legal Affairs Headquarters (8 requests). The ministry with the highest number of reported PATI requests for only government departments was the Ministry of National Security Headquarters, with 17 requests received by its various departments.

|                                                | 2020       | 2021       | 2022       | 2023       |
|------------------------------------------------|------------|------------|------------|------------|
| <b>TOTAL PATI REQUESTS</b>                     |            |            |            |            |
| Reported new requests                          | 114        | 135        | 158        | 189        |
| Reported requests carried over from prior year | 8          | 14         | 8          | 26         |
| <b>Total requests in processing for year</b>   | <b>122</b> | <b>149</b> | <b>166</b> | <b>215</b> |

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

|                                                              | 2020 | 2021 | 2022 | 2023 |
|--------------------------------------------------------------|------|------|------|------|
| <b>INITIAL DISPOSITION OF PATI REQUESTS (AS AT YEAR END)</b> |      |      |      |      |
| Pending                                                      | 11   | 9    | 24   | 14   |
| Access granted in whole                                      | 28   | 33   | 42   | 36   |
| Access granted in part                                       | 26   | 39   | 31   | 56   |
| Access refused in whole                                      | 34   | 56   | 59   | 88   |
| Unknown                                                      | 15   | 12   | 10   | 21   |

In 2023, public authorities reported receiving no new requests 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 2023, the most commonly invoked exemptions were for operations of public authorities (section 30) and personal information (section 23). The most frequently cited administrative ground for refusal was because records did not exist or could not be found (section 16(1)(a)).

|                                         |                                                                                                            | 2020 | 2021 | 2022 | 2023 |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------|------|------|------|------|
| REASONS FOR REFUSAL IN INITIAL DECISION |                                                                                                            |      |      |      |      |
| s.4                                     | Record not within scope of PATI Act                                                                        | 0    | 2    | 3    | 16   |
| s.16(1)(a)                              | Administrative refusal because record does not exist or cannot be found                                    | 15   | 25   | 22   | 33   |
| s.16(1)(b)                              | Administrative refusal because insufficient information in request                                         | 6    | 1    | 1    | 2    |
| s.16(1)(c)                              | Administrative refusal because request would cause substantial and unreasonable interference or disruption | 3    | 5    | 5    | 2    |
| s.16(1)(d)                              | Administrative refusal because publication of information is required by law within 3 months               | 0    | 0    | 0    | 1    |
| s.16(1)(e)                              | Administrative refusal for vexatious request                                                               | 3    | 1    | 0    | 2    |
| s.16(1)(f)                              | Administrative refusal because information is already in public domain                                     | 7    | 11   | 9    | 10   |
| s.16(1)(g)                              | Administrative refusal because fee payable under section 20 not paid                                       | 0    | 0    | 0    | 1    |
| s.22                                    | Health or safety                                                                                           | 1    | 3    | 0    | 1    |
| s.23                                    | Personal information                                                                                       | 13   | 27   | 18   | 18   |
| s.25                                    | Commercial information                                                                                     | 3    | 2    | 1    | 12   |
| s.26                                    | Information received in confidence                                                                         | 6    | 8    | 10   | 7    |
| s.26A                                   | International tax agreements                                                                               | 1    | 0    | 0    | 0    |
| s.27                                    | Cabinet documents                                                                                          | 0    | 0    | 0    | 0    |
| s.28                                    | Ministerial responsibility                                                                                 | 2    | 3    | 0    | 1    |
| s.29                                    | Deliberations of public authorities                                                                        | 4    | 5    | 9    | 4    |
| s.30                                    | Operations of public authorities                                                                           | 11   | 6    | 4    | 21   |
| s.31                                    | Financial and economic interests                                                                           | 0    | 0    | 0    | 2    |
| s.32                                    | National security, defence and international relations                                                     | 0    | 1    | 0    | 6    |
| s.33                                    | Governor's responsibilities                                                                                | 0    | 0    | 2    | 3    |
| s.34                                    | Law enforcement                                                                                            | 6    | 11   | 15   | 14   |
| s.35                                    | Legal professional privilege                                                                               | 4    | 3    | 2    | 7    |
| s.36                                    | Contempt of court and parliamentary privilege                                                              | 0    | 0    | 0    | 0    |
| s.37                                    | Disclosure prohibited by other legislation                                                                 | 5    | 3    | 6    | 8    |
| s.38                                    | Non-disclosure of existence of a record                                                                    | 3    | 0    | 1    | 5    |
|                                         | Failure to decide                                                                                          | 6    | 9    | 18   | 30   |

Public authorities also reported that individuals sought internal reviews 55 times in 2023, though the outcome of 8 were unknown. The majority of the internal review decisions denied access to the records, as shown below.

|                                                 | 2020      | 2021      | 2022      | 2023      |
|-------------------------------------------------|-----------|-----------|-----------|-----------|
| <b>DISPOSITIONS OF INTERNAL REVIEWS</b>         |           |           |           |           |
| Pending                                         | 0         | 2         | 0         | 7         |
| Grant access in whole                           | 2         | 5         | 9         | 1         |
| Grant access in part                            | 12        | 8         | 7         | 12        |
| Refuse in whole*                                | 6         | 13        | 20        | 26        |
| Procedural issues**                             | 0         | 0         | 0         | 0         |
| Referred to Commissioner***                     | 1         | 3         | 0         | 1         |
| <b>Total reported internal review decisions</b> | <b>21</b> | <b>31</b> | <b>36</b> | <b>47</b> |

\*Failure to issue a timely internal review decision deemed a refusal in whole.

\*\*This includes issues such as a failure to comply with timeframes or a transfer to another authority.

\*\*\*This means that the request for an internal review was referred under section 44 to the Information Commissioner, because the head of authority had made the initial decision.



The reasons invoked by public authorities in 2023 to refuse PATI requests at the internal review stage are captured in the following table.

|                                                |                                                                                                            | 2020 | 2021 | 2022 | 2023 |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------|------|------|------|------|
| REASON FOR REFUSAL IN INTERNAL REVIEW DECISION |                                                                                                            |      |      |      |      |
| s.4                                            | Records not within scope of PATI Act                                                                       | 0    | 0    | 0    | 3    |
| s.16(1)(a)                                     | Administrative refusal because record does not exist or cannot be found                                    | 4    | 5    | 6    | 11   |
| s.16(1)(c)                                     | Administrative refusal because request would cause substantial and unreasonable interference or disruption | 2    | 0    | 1    | 1    |
| s.16(1)(d)                                     | Administrative refusal because publication of information is required by law within 3 months               | 0    | 0    | 0    | 4    |
| s.16(1)(e)                                     | Vexatious request                                                                                          | 0    | 0    | 0    | 0    |
| s.16(1)(f)                                     | Administrative refusal because information is already in public domain                                     | 1    | 0    | 3    | 0    |
| s.23                                           | Personal information                                                                                       | 1    | 3    | 7    | 3    |
| s.25                                           | Commercial information                                                                                     | 0    | 3    | 4    | 0    |
| s.26                                           | Information received in confidence                                                                         | 1    | 2    | 5    | 0    |
| s.27                                           | Cabinet documents                                                                                          | 0    | 0    | 1    | 0    |
| s.28                                           | Ministerial responsibility                                                                                 | 1    | 1    | 1    | 2    |
| s.29                                           | Deliberations of public authorities                                                                        | 2    | 0    | 7    | 1    |
| s.30                                           | Operations of public authorities                                                                           | 1    | 0    | 6    | 5    |
| s.32                                           | National security, defence and international relations                                                     | 0    | 0    | 0    | 0    |
| s.33                                           | Governor's responsibilities                                                                                | 0    | 0    | 3    | 2    |
| s.34                                           | Law enforcement                                                                                            | 2    | 7    | 11   | 0    |
| s.35                                           | Legal professional privilege                                                                               | 2    | 0    | 2    | 9    |
| s.36                                           | Contempt of court and parliamentary privilege                                                              | 0    | 0    | 0    | 3    |
| s.37                                           | Disclosure prohibited by other legislation                                                                 | 1    | 0    | 2    | 0    |
| s.38                                           | Non-disclosure of existence of a record                                                                    | 0    | 0    | 2    | 3    |
|                                                | Failure to decide                                                                                          | 0    | 6    | 2    | 1    |
|                                                | Request for internal review out of time                                                                    | 0    | 0    | 0    | 1    |

“

**There is always room for policy framework improvements. . . In the current state of the world, though, I have some concern that we need to focus, or continue to focus, our attention on the standards for the implementation of existing access to information policy and legal frameworks to ensure that the aspirations they espouse do not stray too far from the reality of citizen’s experiences when exercising their rights.**

”

*Information Commissioner Gutierrez, panelist on Policy Framework for ATI in the global arena, ICIC Conference, June 2023*



# IMPROVING ACCESS TO INFORMATION

Over the past year, positive developments have strengthened information access rights, the September 2023 cybersecurity incident left behind continuing challenges, and potential legislative amendments raised uncertainties about the changes ahead.

## PATI AND PIPA HARMONISATION LEGISLATION

The long-anticipated harmonising legislation for the PATI Act with the Personal Information Protection Act 2016 (PIPA) was passed in July 2023, and PIPA shall come into full effect on 1 January 2025. The ICO has provided consultation on the harmonisation legislation since 2017. Third-party personal information may still be requested and processed under the PATI Act. Once PIPA comes into effect for public authorities, however, all requests for an individual's own personal information will be handled under PIPA. The harmonisation with the PATI Act and commencement date for PIPA help to complete Bermuda's information rights framework.

## SEPTEMBER 2023 CYBERSECURITY INCIDENT

On 22 September 2023, the Government announced that it had been the subject of a sophisticated and unprecedented cybersecurity attack. The incident had an immediate impact on the availability of the entire government network and all servers. The ICO issued the *Information Commissioner's Statement on the Impact of the Government's Cybersecurity Incident* on 25 September 2023 reminding public authorities of the duty to preserve communications through unofficial means of communication following the attack, followed by an interim guidance in October 2023 to assist public authorities in managing their PATI responsibilities. As the Government continues to recover, it is critical that the public receive further information on the restoration of access to historical, electronic government records prior to 20 September 2023.

**“The Government is responsible for managing extensive electronic public records, containing information held in trust on behalf of the Bermuda public. Electronic public information is an invaluable asset. The restoration of access to electronic public records facilitates the responses to new and pending PATI requests. The PATI process allows the public to promote accountability and transparency for government decision making on any number of important issues to individuals, communities and the country as a whole.”**

*Information Commissioner Gutierrez, 17 October 2023*

## LEGISLATIVE AMENDMENTS

With respect to legislative developments, the Government has announced several potential changes to improve the administration of the PATI Act framework, including the possibility of charging a fee for submitting a PATI request. To date, the Government has not yet moved forward with amendments to the PATI Act, and details of some potential modifications are unknown. The ICO has also consulted extensively on other amendments to improve and strengthen the PATI Act, including the framework for the Information Commissioner's reviews. The ICO's consultations have focused on improving the legislation for the benefit of the public and public authorities.

## ACCESSING READILY AVAILABLE RESOURCES TO SUPPORT GOOD PATI PRACTICES

The single, most impactful step that can be made to improve the administration of the PATI Act and uphold the right to access public records is simple—and requires no additional public funding. **The administration of the PATI Act can be greatly improved by executive and senior management ensuring that Information Officers and others involved in handling PATI requests can access PATI training and resources, and adhere to the Practice Code on the Administration of the PATI Act.**

By international standards, the PATI Act is model access to information legislation. Despite this, the Government has announced and withdrawn several proposals that appear to be politically-driven, rather than data-driven, efforts to improve the administrative efficiency of the PATI process by lessening the right of access. Insufficient attention has been given to the available data on the administration of the PATI Act and the need to access training and support resources. Rather than seeking to amend or constrict PATI rights, public authorities must focus on improving their practice under the existing framework with the readily available resources.

Granted, this will require commitment by public sector leadership and the investment of officers' time. **Yet, the ICO has seen repeatedly that a failure to exercise needed leadership and make the necessary investment of time offers a perceived, short-term gain that is followed by a much costlier administration of the PATI Act, both in terms of time and financial resources.** This occurs when:

- poor PATI practice results in lengthy or even repeated Information Commissioner's reviews, such as the 57% of Information Commissioner's 2023 failure-to-decide reviews that were then followed by a new Information Commissioner's review on the public authority's decision to deny or grant access;
- public authorities do not conduct and document proper searches for responsive records at the initial decision stage (or no search is conducted at all) and it results too often in a public authority coming before the Information Commissioner without having located or retrieved any responsive records; or

- public authorities are unfamiliar with the correct procedures to administratively deny a PATI request that would create a substantial and unreasonable burden on the public authority (which includes the requirement to offer to consult with a requester to amend or narrow the request), and, instead, expend inappropriate or disproportionate resources to process the request, rather than adhering to the PATI Act and the steps set out in the Minister's Practice Code.

These missteps and others cause unnecessary expenditure of resources by public authorities; create unwarranted delays in the PATI process and Information Commissioner's reviews; and undermine the public's right to access public information and the purposes of the PATI Act.

The PATI Act is now an integral part of public sector work. Data collected from the ICO's annual public awareness surveys are a resource for policy makers and others as they consider how to improve the administration of the legislation. Public authorities may be encouraged that the majority of respondents who made requests for records have high satisfaction with the responses that they received from a public authority.

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#### SATISFACTION WITH RESPONSE FROM RESPONDENTS WHO MADE REQUESTS FOR RECORDS



The annual public awareness survey has further shown that respondents have consistently identified the PATI Act as an important public investment.

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RESPONDENTS WHO BELIEVE THAT CREATING AND ENFORCING THE  
PATI ACT IS A VERY IMPORTANT PUBLIC INVESTMENT



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Information is a valued asset in our modern world. Public authorities have robust infrastructures in place to govern the management of their financial assets, including financial instructions and other guidelines, accounting standards, risk controls, trained personnel, appropriate processes, and so on. **No public authority should simply turn millions of dollars in assets over to an individual to manage without first assuring itself that the individual has the needed skills and is provided with the required training and resources, to properly steward the funds. Yet, some public authorities do just this in the management of their information assets and the PATI Act. Public authorities must adopt a different approach and, instead, manage their information assets and support those handling those assets with the same level of care given to financial assets.**



# STRENGTHENING THE ORGANISATION

As a forward-looking, independent oversight body, the ICO continually seeks to improve the quality and effectiveness of its work, as well as the infrastructure that supports its efforts.

## PROFESSIONAL DEVELOPMENT AND NEW OFFICERS

As part of the ICO's leadership development and succession planning, it has continued to develop its public officers, who remain the ICO's most valued asset. The ICO first reached full staffing in 2022, and this continued into 2023. As a result, the Information Commissioner issued 62% more formal decisions and closed 50% more applications in 2023, as compared to 2022—perhaps the most meaningful indicator when assessing the overall performance of the ICO.

The ICO was pleased to welcome the return of Caitlin Conyers in September 2023 as a Relief Investigation Officer. Ms. Conyers had previously joined the ICO as an Investigation Officer in July 2018, but left the position in January 2020 to represent Bermuda as an elite cyclist. Ms. Conyers was called to the Bermuda Bar in 2017.

The ICO's two most long-standing officers transitioned into new leadership roles. Answer Styannes joined the ICO as an Investigation Officer in October 2016 and served as Acting Deputy Information Commissioner from October 2022 to September 2023 as part of the ICO's leadership development initiative. In October 2023, following the conclusion of her long-term Acting appointment, Ms. Styannes became the ICO's Senior Investigation Officer. In this role, she is responsible for complex reviews, assisting with the management of the review team's work, and mentorship and training of Investigation Officers. Tikitta Suhartono joined the ICO in November 2015 as an Office Manager. In May 2023, she joined the ICO's management team as the Manager - Finance & Administrative. Ms. Styannes and Ms. Suhartono bring a wealth of historical institutional knowledge with honed skills and experience to their new roles, to the benefit of the ICO, the public and public authorities.

Finally, the ICO's leadership development initiative continued with the appointment of LaKai Dill as Acting Deputy Information Commissioner in October 2023, and she will continue in this role in 2024. Ms. Dill joined the ICO as an Investigation Officer in March 2020 after serving 5 years as an Investigation Officer with the Bermuda Ombudsman's office. As part of the ICO's management team, Ms. Dill continues to enhance the efficiencies of the ICO's processes and strengthen its organisation. She brings a strong commitment to the growth of Bermuda's accountability institutions and a wealth of leadership, experience and knowledge to strengthen the ICO in her new role.

The ICO's review team also virtually attended a conference hosted by Canada's Information Commissioner's offices, which was tailored for investigators in their federal, provincial and territorial offices. As the first international office participating in their conference, the ICO was welcomed by its colleagues. The sessions included presentations on alternative dispute resolution and approaches to early case resolution, dealing with difficult applicant behaviours, and increasing efficiency and reducing backlogs—all within the context of access to information reviews. The ICO has begun to apply its learnings from the conference to support more efficient processes.

## EXPANDED OFFICE SPACE

In July 2023, the ICO moved into an expanded office space in its existing building. The ICO is co-located with the Office of the Privacy Commissioner on the fourth floor of the Maxwell Roberts Building. The additional room has allowed for more fulsome separation between the ICO and the growing Office of the Privacy Commissioner to maintain the required confidentiality concerning their respective work. At the same time, the offices continue to benefit from shared common spaces and certain administrative services.



## BERMUDA RE-ELECTED TO EXECUTIVE COMMITTEE OF INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS

The International Conference of Information Commissioners (ICIC) announced in June 2023 that the Bermuda ICO was re-elected to the ICIC's 9-member Executive Committee for a second term until 2026. The Bermuda ICO was elected as 1 of 4 members from a slate of 8. The Bermuda ICO has been a part of the ICIC's leadership since 2019 under Information Commissioner Gutierrez's leadership and will continue in this role with Bermuda's next Information Commissioner. 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 Bermuda ICO has benefitted extensively over the years from collaboration with ICIC partners in all aspects of its work.

**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:

|                                                                                   |                                   |                                                                                         |
|-----------------------------------------------------------------------------------|-----------------------------------|-----------------------------------------------------------------------------------------|
|  | Mexico<br>(Chair and Secretariat) | National Institute for Transparency, Access to Information and Personal Data Protection |
|  | Albania                           | Information and Data Protection Commissioner                                            |
|  | Buenos Aires, Argentina           | Guarantor Body for the Right to Access the Information                                  |
|  | Bangladesh                        | Information Commission                                                                  |
|  | Bermuda                           | Information Commissioner's Office                                                       |
|  | Germany                           | Federal Commission for Data Protection and Freedom of Information                       |
|  | Philippines                       | Freedom of Information Programme Management Office of the Philippines                   |
|  | South Africa                      | Information Regulator                                                                   |
|  | United States                     | The Office of Government Information Services                                           |

In June 2023, Information Commissioner Gutierrez and Investigation Officer LaKai Dill attended the 14th annual conference of the ICIC, in Manila, Philippines, hosted by the Freedom of Information Philippines. This year's ICIC theme was *Bridging information across nations*. The event was attended by access to information (ATI) specialists from around the world, across Africa, Asia and Oceania among other regions. It was the first time the ICIC has been held in Asia.



ICIC Conference delegates, including ICIC Executive Committee members, at the opening ceremony, alongside H.E. Ferdinand R. Marcos Jr., President of the Republic of the Philippines (front middle), as the keynote speaker, and Cheloy Garafil, Secretary of the Presidential Communications.

The conference included two 'open' days of panels, presentations and meetings, followed by a third 'closed' day for ICIC members. On the first day, Information Commissioner Gutierrez participated on a panel called *Policy framework for ATI in the global arena*. She emphasised that improving how existing legal and policy frameworks are implemented may be one of the most important challenges. She highlighted the subtle barriers that arise on a local level to dissuade people from using their ATI rights, as well as government actions that weaken oversight. Information Commissioner Gutierrez concluded on the ICIC's opportunities to strengthen international standards, ensuring the ATI promise is realised for citizens.



Information Commissioner Gitanjali Gutierrez speaking on the panel for *Policy framework for access to information (ATI) in the global arena*.

Investigation Officer LaKai Dill spoke on a panel about *Open contracting for public sector cost effectiveness*. She highlighted how Bermuda's PATI Act creates two ATI pathways related public procurement, one being government-driven and the other citizen-driven. She offered insights into some factors that could hinder such information being disclosed, including the 'people' element and misunderstanding third-party rights. Ms. Dill concluded on the importance of informal interventions and practice-oriented guidance to help public authorities improve their ATI decision making.



Investigation Officer LaKai Dill speaking on Open contracting for public sector cost effectiveness panel.

Information Commissioner Gutierrez and Ms. Dill also observed an official meeting of the recently inaugurated African Network of Information Commissioners and another for the Australia-New Zealand region (including Indo-Pacific small island developing states).

## FINANCES

The ICO proactively publishes details of its financial decisions and public expenditures. Its original budget estimate for the fiscal year ending 31 March 2024 was \$1,077,734, with the final adjusted budget available after 31 March 2024 in light of pending legal matters at the time of tabling of this Annual Report. 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 [ico.bm](http://ico.bm).

To ask for more information about the ICO's activities, email [info@ico.bm](mailto:info@ico.bm).



Find more information about the ICIC at [informationcommissioners.org](http://informationcommissioners.org). View all recordings of the 2023 conference's 'open' sessions on the ICIC's YouTube channel.



**After a year of delay, this review ends where it began essentially: with responsive records not yet readied for this outstanding PATI request, and the public authority again without dedicated resources to meet its PATI obligations.**

**As the Information Commissioner has noted in Decision 07/2022, [Ministry of Finance Headquarters] the difficulties within the Ministry Headquarters are systemic and undermine the public's right to hold government accountable. The Information Commissioner renews her recommendation that the Ministry Headquarters allocate appropriate resources and seek appropriate training and support to improve its administration of its PATI responsibilities. This, in turn, strengthens its capacity to uphold Bermudians and residents' rights to request access to records held by the Ministry Headquarters.**

**As the Ministry Headquarters seeks to continue improving its practices, the Information Commissioner welcomes a more robust adherence to the rights afforded to Bermudians and residents under the PATI Act in the future.**



*Decision 08/2023, Ministry of Finance Headquarters, paras. 57-59*



## LOOKING AHEAD

**As we look ahead to the tenth year of the PATI Act being in force, we have an opportunity to assess how well the government and other public authorities have delivered on the promises of the PATI Act in the past decade.**

PATI rights are now embedded in our culture. The number of PATI requests made by Bermudians and residents continues to increase year over year. At the end of 2024, we will have a decade of data on the use of the PATI Act, including which public authorities receive requests, which provisions of the PATI Act are relied on the most, and data on the outcome of requests. The Minister's Practice Code on the Administration of the PATI Act has been published, and extensive training and guidance resources are available for public authorities. Two internationally recognised institutions—the US-based Carter Center and the Canadian Centre for Law and Democracy—have evaluated the PATI Act's legislation as written and as implemented. I have also published a Report and Recommendations on the Implementation of the PATI Act, offering guidance on amendments needed to strengthen the administration of the Act.

### **Now what?**

**In many ways, both the Government and the people of Bermuda have reached a turning point.**

For the Government, one priority will be addressing the administrative burden of the PATI Act. It is clear that many government bodies and public authorities are in need of resources to meet the obligations placed on them by the Act. This includes investment in good records management systems and practices, ensuring that public officers have access to appropriate training and support, and the inclusion of Information Officer and other duties into job descriptions (as has been done by some public authorities). Key to the implementation of good records management will be the publication of the Minister's Administrative Code of Practice on Records Management, required by section 60(2) of the PATI Act.

A further priority will be strengthening the PATI framework to ensure that the public's access to information is not limited arbitrarily. Most pressing, this includes the amendment of section 37 of the Act and a legislative review of existing secrecy provisions that no longer reflect a modern understanding of government transparency, which was discussed at the time the PATI Act was implemented.

For the people of Bermuda, PATI rights and public information are now in your hands. People are empowered through their PATI rights to help ensure that the actions of government and other public authorities align with the

public's interests. The success of the PATI Act, however, depends on the public understanding and exercise of these rights. This includes asking for public records, participating in policy making, advocating for change, scrutinizing the decision-making of public authorities, monitoring public spending and holding public authorities and elected officials accountable.

The choices made now will shape good governance and the growth of democracy in Bermuda in the years ahead.

In this respect, I urge the Government to consult meaningfully with my office, the public and public authorities prior to any amendments to the PATI Act that may lessen the public's right to information. Proposed amendments should be the result of evidence-based, well-reasoned policy recommendations, and not a result of reactive responses, which may be driven more by politics than by policy. The ICO is committed to sharing data and analysis for all stakeholders' consideration, to help address the challenges posed by the PATI Act and ensure that we realise its full potential to foster a more open and participatory democracy for the benefit of everyone in Bermuda.

**GITANJALI S. GUTIERREZ**  
INFORMATION COMMISSIONER

**“ Notwithstanding that journalists and politicians play an important role in holding the government of the day to account, critics of the PATI Act must bear in mind the extent to which our neighbours and friends throughout Bermuda have relied on the PATI Act as the only available means to obtain information from public authorities, and thereby become better informed citizens. They may be seeking to assist their families, community organizations or friends, or may be seeking redress of their own grievances. ”**

*Information Commissioner's Report and Recommendation on the Implementation of the Public Access to Information Act 2010 (March 2021)*

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