

MONTHLY ROUNDUP

Volume II, Issue 9

OCTOBER 2019

WELCOME!

The Information Commissioner's Office (ICO) welcomes you to the October 2019 issue of our Monthly Roundup! The ICO is an independent, public office that promotes and oversees the use of the Public Access to Information (PATI) Act 2010 in Bermuda.

Section 12(1) of the PATI Act gives Bermudians and residents of Bermuda the legal right to request access to records held by public authorities, unless the PATI Act allows a public authority to withhold access to that record. PATI requesters are empowered under the Act to pursue and seek enforcement of these rights. The institution of the Information Commissioner in Bermuda is key to safeguarding this statutory framework.

In Bermuda, public access to information community stakeholders include information officers, heads of public authorities, requesters, the public, as well as many other local special interest groups.

The ICO is guided by its core values: **Independence, Integrity and Fairness**. We hope that the information in our Roundups reinforces the benefits of the PATI Act for Bermuda, increases the public's understanding of how to use their legal rights under the PATI Act, provides guidance to public authorities about their responsibilities under the PATI Act, and builds confidence in the ICO's role in safeguarding these rights and responsibilities.

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- Recent Information Commissioner's decisions and resolutions
- Our monthly recap: Statistics for our cases
- 2019 ICO Annual Return spotlight



“...the PATI Act's potential for strengthening good governance will only be realized through its regular use by Bermudians and residents of Bermuda making PATI requests...”

Gitanjali Gutierrez,
Information Commissioner,
2019 Right to Know Day Declaration

DECISIONS ISSUED

In October, the Information Commissioner received two new applications, and issued four decisions,

How do you balance protecting personal information with promoting accountability for public spending? Read [Decision 24/2019](#) to find out! In [Decision 24/2019](#), the Information Commissioner considered the Bermuda Hospitals Board's (BHB) decision to refuse a PATI request for records concerning the compensation details of its Executive Team members.

The Information Commissioner found that BHB was correct to withhold some personal information under the personal information exemption of the PATI Act. This included the Executive Team's actual basic pay, total compensation, and total cost. Keeping this information confidential protected the personal information of those individuals. To satisfy the balance of the public interests—including promoting transparency around public spending—the Information Commissioner ordered the Bermuda Hospitals Board to disclose the range of total cost by individual Executive Team member position, in a band of \$10,000.

The Information Commissioner also required BHB to disclose other standardized information that applies to these posts, such as social and health insurance as well as payroll tax and pension rates. The Information Commissioner also considered records containing information of payments made to PricewaterhouseCoopers Bermuda for the secondment of one of its staff to BHB. The PWC payments did not meet the definition of personal information because they arose from a contract for services, in accordance with section 24 (2)(b) of the PATI Act.

Should exemptions be read narrowly? Yes, the PATI Act requires this. In [Decision 25/2019](#), the Information Commissioner discusses the Bermuda Police Service's (BPS) use of the exemptions for health and safety (section 22) as well as law enforcement (section 34(1)(e)) to partially withhold the Operational Order on the policing of the 2 December 2016 protest.

Under the health and safety exemption under the PATI Act, the Information Commissioner found that the BPS was correct to withhold the identities of most of the officers involved in the policing, but not those of the Gold and Silver Commanders.

She noted that the law enforcement exemption in section 34(1)(e) should be read narrowly.

continued . . .



DECISIONS ISSUED, cont.

This means that the exemption cannot apply if the withheld information is not itself a law enforcement method or procedure. The Information Commissioner also emphasized that it is not reasonable to expect that law enforcement methods or procedures will be prejudiced by disclosure if that disclosure would only reveal methods or procedures that are already well known to the public. The Information Commissioner concluded that section 34(1)(e) did not apply to some of the redacted parts of the Operational Order.

Decision 25/2019 also highlights the importance of conducting a search with rigour and efficiency. In this case, the BPS interpreted the PATI request appropriately and correctly identified the potential locations and individuals who may hold the responsive records. Not all officers, however, replied to the BPS's request to search their records, which led to the Information Commissioner's conclusion that the search was not reasonable.

The BPS was ordered to disclose parts of the Operational Order, which had been previously redacted, to conduct additional searches, and to issue a new initial decision on any additional records, including notes on the meetings that took place on 2 December 2016 taken by a scribe and the Public Order Tactical Advisors Log dated 2 December 2016.

In **Decisions 22/2019** and **23/2019**, the Information Commissioner considered the failure of the Ministry of National Security and the Criminal Injuries Compensation Board, respectively, to issue internal review decisions within the statutory timeframe. The Ministry of National Security issued an internal review during the Information Commissioner's review, and was not ordered to take further action. The Criminal Injuries Compensation Board was ordered to issue an internal review decision within six weeks after the date of the Information Commissioner's decision.

We will be relocating our office in the near future! Preparations are already under way. Stay tuned for updates on our new location.



PUBLIC AUTHORITIES: 2019 ICO ANNUAL RETURNS

Public authorities have an opportunity now to prepare for the 2019 ICO Annual Return. The ICO has started to distribute the 2019 ICO Annual Return package in early November.

The ICO 2019 Annual Return is part of the Information Commissioner's oversight of the proactive publication requirements in Part 2 of the PATI Act. It also supports section 58(3) of the Act, which requires public authorities to submit their annual PATI statistics to the Information Commissioner for inclusion in her Annual Report.

As a reminder, under the PATI Act, public authorities must comply with the following proactive publication requirements:

- Review and update its information statement at least once a year, including listing the name and contact details for the public authority's information officer
- Have available its PATI request log
- Have available its quarterly expenditures
- Gazette the details of contracts with a total value of \$50,000 or more
- Voluntary publication of additional information

The ICO Annual Return package provides a convenient opportunity for public authorities to annually review their compliance with the Act and for systematic submission of that information to the Information Commissioner.

The ICO Annual Return consists of 4 forms and each provides cross-references to the relevant sections of the Act, thereby enhancing public authorities' understanding and knowledge of the Act:

- Instructions page
- Form A – s.58(3) Annual PATI Statistics
- Form B – s.5 Information Statement
- Form C – s.6 Other Information
- Form D – s.10 Voluntary Publication

The PATI Act requires the 2019 ICO Annual Return to be **submitted by Tuesday, 31 December 2019, with the ICO extending a grace period to Friday, 10 January 2020.** Completed Returns should be submitted to the ICO at stats@ico.bm.

ICO Project Officer Sheena Bassett is also available to answer any questions that you may have about the Annual Return, if needed.





Now available in Portuguese!
Check out our new know-your-rights brochure!
Feel free to stop by our office and get your copy.
More updates are coming soon, please stay tuned!

SAVE THE DATE

Information Commissioner's Quarterly Briefing

Wednesday, 4 December 2019

Topic: *Section 25—the four commercial information exemptions*

Wednesday, 11 March 2019

Topic: *TBD*

RSVP will be required. Registration details will be emailed to public authorities.

If you are an Information Officer or Head of a Public Authority and you are not receiving emails from our office on ICO-related updates, please email us at info@ico.bm to be added to our email list.

ICO “SUNSHINERS” FINISH STRONG IN THE GLOBAL CHALLENGE

We did it! The ICO staff and Sonia Astwood of the Human Rights Commission joined forces as ‘The Sunshiners’ and participated in the Global Health Challenge. We climbed those stairs, we tried kickboxing, plunged into water aerobics and started spinning! Thank you to Dr. Derrick Binns and the Employee Wellness Committee for making our participation in the Virgin Pulse 100 Day Global Challenge possible. The Global Health Challenge provided our team, along with other public officers, with an opportunity to kick start some healthier lifestyle habits.



Some of the highlights of the challenge:

- Total steps by The Sunshiners: 9,494,053
- Total steps for Bermuda Government Global Challenge participants: 851,122,157
- Daily Steps Average for The Sunshiners: 13,582
- The Sunshiners; Final Position: 31 out of 98 teams

ICO Statistics as of 31 October 2019

(from 1 April 2015)

Total applications for independent review	Closed: Decided	49
by the Information Commissioner130	Closed: Resolved	14
Pending investigations	Closed: Abandoned	7
Applications pending validation	Closed: Invalid	18
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Information Commissioner’s Office

Valerie T. Scott Building
60 Reid Street, Hamilton HM 12
441-294-9181

info@ico.bm

www.ico.bm

www.facebook.com/icobermuda

