

PATI Information Statement

Name of Public Authority: Information Commissioner's Office

The Information Commissioner's Office (ICO) is strongly committed to transparency and to best practices under the Public Access To Information (PATI) Act 2010. The PATI Act gives the public a right to access records that public authorities have. It supports the idea that public records should be considered a national resource. Throughout the world, public access to information laws help strengthen democracies. These laws allow the public to know more about how and why public authorities do particular work or make certain decisions, and how public money is spent.

The PATI Act grants Bermudians and residents of Bermuda a new legal right to access public records. Importantly, the PATI Act requires that if a request is made, the public authority may only refuse to turn over the record in specific circumstances set out in the Act. Otherwise, access to the information must be granted. A public authority does not have the freedom to deny access to public records unless the denial is permitted by one of the reasons listed in the PATI Act. The law strikes a balance between the public's right to know information and the public authority's need to keep some information confidential.

The PATI Act also makes more information from public authorities available to the public as a matter of routine. This information is either made public by the authority or the authority will give it to you when you ask for it.

The purposes of the PATI Act are specifically set forth under section 2 as follows:

- (a) 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;
- (b) increase transparency, and eliminate unnecessary secrecy, with regard to information held by public authorities;
- (c) increase the accountability of public authorities;
- (d) inform the public about the activities of public authorities, including the manner in which they make decisions; and
- (e) have more information placed in the public domain as a matter of routine.

The ICO provides this Information Statement to facilitate the public's access to records held by this office. Our Information Statement is also designed to help you understand the ICO's education, guidance, and oversight role under the PATI Act.

Note that section 4(1)(b) makes the PATI Act inapplicable to records 'obtained or created' by the ICO 'in the course of carrying out' its functions. This means that some records we hold will not be subject to PATI Act disclosure. These records include documents created or obtained when the Information Commissioner conducts a review of a public authority's decision on a request for records. These records from the review are confidential, although a public, formal decision may be issued. This section also prevents disclosure of the records created or obtained during the Information Commissioner's investigation into a public authority's compliance with its obligations under the PATI Act. Remember, though, that a public report will usually be issued after the investigation. Although we are not required under the PATI Act to disclose our operational records, unless we are bound by confidentiality as described above or other legal limitations, we will voluntarily release as much information about our activities as we can.

The ICO's general administrative records are subject to the PATI Act. To the greatest extent possible, these records will be automatically posted on our website, www.ico.bm, as they become available.

This Information Statement outlines the specific education, guidance, and oversight roles of the ICO for the public and public authorities' rights and responsibilities under the PATI Act. It also includes background on our office's spending and budget, structure, development, decision making, and other information that will assist the public's ability to exercise their rights under the PATI Act.

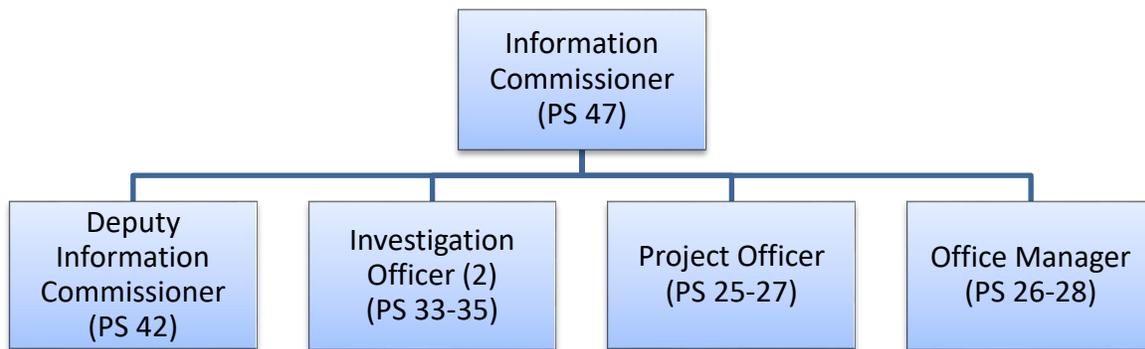
Section A: Structure, Organization and Legislation [s5(1)a]

The Information Commissioner's Office was established as a public office on 2 March 2015 and is governed by the Public Access to Information (PATI) Act 2010 and PATI Regulations 2014.

The PATI Act protects the independence of the Information Commissioner, which is critical to the exercise of her oversight functions. Section 50(4) of the PATI affirms that 'the Commissioner shall not be subject to the direction or control of any other person or authority' in the exercise of her function.

The 2018-19 Approved Budget for the Information Commissioner's Office is \$957,093. Further details about our budget and expenditures are available at www.ico.bm.

Organisational Chart (as at 7 June 2019)



The Information Commissioner's Office also engages technical and professional advisers as consultants in performing its duties.

Governing Legislation

Public Access to Information Act 2010

Public Access to Information Regulations 2014

Copies of the governing legislation are available on www.ico.bm

Section B: 1) Functions, powers, duties of the Authority [s5(1)b]

The Information Commissioner's Office is an independent, non-governmental office that promotes and oversees the use of the PATI Act in three ways:

- **Public Awareness:** promoting the public's awareness of their rights under the PATI Act
- **Guidance and Oversight:** providing general guidance about and oversight of public authorities' responsibilities under the PATI Act
- **Reviews:** hear, investigate and rule on requesters' appeals from public authorities' decisions about requests for access to records

The ICO key performance measures for the 2018-19 Budget Year are set out in our 2018-19 Budget Pages, available at www.ico.bm, and explain how we intend to fulfil our mandate through various education and outreach efforts, as well as proactive compliance activities.

In the context of the ICO's oversight and review functions, the Information Commissioner is vested with a number of powers under the PATI Act. The Information Commissioner may issue an order to a public authority to comply with its proactive, routine disclosure requirements under Part 2 of the PATI Act. When the Information Commissioner files a compliance order with the Registrar of the Supreme Court, the order has the same effect as an order of the court and may be enforced by the Information Commissioner.

An important part of the ICO's job is to hear reviews (appeals) from requesters who disagree with a public authority's decision on their PATI request. To do this job, the ICO must remain independent of political parties, the Government, public authorities, and any other bias. The Information Commissioner's reviews are guided by our three core values: independence, integrity, and fairness.

A review by the Information Commissioner has four main stages: Validation, Resolution, Investigation, and Decision. The ICO takes a resolution-based approach to applications. This means that, when appropriate, the ICO will attempt throughout the review to resolve the application using alternative dispute resolutions processes. In many cases, this will involve informal facilitated resolution by the ICO staff.

During the investigation of a review, the Information Commissioner has the same authority as a judge of the Supreme Court to summon and enforce the appearance of persons; to compel oral or written evidence on oath or affirmation; and to compel the production of evidence. The Information Commissioner can also receive evidence as necessary, regardless of whether it would be admissible in a court of law. She can also enter any premise occupied by any public authority; converse in private with any person in the premise; examine or obtain copies of relevant records found on the premises; and otherwise carry out any needed inquiries in the premise authorized by the PATI Act. Public authorities may not withhold relevant records from the Information Commissioner's inspection when she is conducting a review.

Should resolution be inappropriate or not fully successful, the application will progress through the investigation to a formal decision. At the conclusion of the review, the Information Commissioner will issue a binding decision that affirms, varies, or modifies the public authority's decision and includes any other order that is necessary for compliance with the PATI Act. When filed with the Registrar of the Supreme Court, it has the same effect as an order of the court.

The Information Commissioner has published the ICO's *Reviews Policy and Handbook* for the benefit of the public and those involved in the use of the PATI Act. It sets out the policies and procedures our staff will follow when handling reviews. We have also

published Guides for applicants or third parties, as well as for public authorities, *Information Commissioner's Reviews: A guide for applicants and third parties* and *Information Commissioner's Reviews: A guide for public authorities*. Both guides are available on our website, www.ico.bm.

Any person, including a public authority, who is aggrieved by a decision of the Information Commissioner may apply to the Supreme Court for judicial review of the decision.

Reporting framework

As noted above, the review decisions of the Information Commissioner are subject to judicial review. Information Commissioner must also submit an annual report to Parliament on the operation of the PATI Act.

With respect to the ICO's administrative functions, including the management of public funds, the Information Commissioner is designated as the accounting officer and must keep proper accounts of all financial transactions. She is responsible for submitting an annual statement of these accounts to the Accountant General. The accounts of the ICO shall be reported annually by the Accountant General and subject to independent audit by the Auditor General.

To preserve the independence of the Information Commissioner's Office, the PATI Act states that 'the Commissioner shall not be subject to the direction or control of any other person or authority' in the exercise of her functions.

Section B: 2) Obligations under PATI Act [s5(1)b]

The Information Commissioner's Office shares the same general obligations under the PATI as all public authorities, as well as additional, specific obligations unique to it:

General Obligations:

- To provide an information statement for the public and promulgate it (s5),
- To provide other information to the public so that the public needs only to have minimum resort to the use of the Act to obtain information (s6). This includes:
 - General information, e.g. activities of the Authority
 - Log of all information requests and their outcome
 - Quarterly expenditure (upon request) (s6(5))
 - Contracts valued at \$50,000 or more
- To respond to information requests in a timely manner (s12-16)
- To track information requests, and provide this data to the Information Commissioner
- To respond to requests from the Information Commissioner (s9)

- To amend personal information held by the Authority that it is wrong or misleading following a written request by the person to whom the information relates (s19)
- To conduct an internal review if formally requested (part 5)
- To give evidence for review by the Information Commissioner (part 6, 47(4)), or for judicial review (s49), if required
- To provide an annual written report to the Information Commissioner of the status of information requests (s58 (3))
- To do anything else as required under the PATI Act and subsequent Regulations (s59, 60), including:
 - Fees for Requests for information
 - Management and maintenance of records
 - Procedures for administering the Act
- To train staff and make arrangements so as to facilitate compliance with the PATI Act (s61)
- To designate one of its officers to be the person to whom requests are directed (s62)

Specific Obligations:

The Information Commissioner's Office also has specific review, oversight and guidance obligations under the PATI Act:

- To promote public access to information in accordance with the PATI Act, including by raising public awareness and understanding of the rights conferred by the PATI Act and by providing guidance to public authorities with regard to their obligations imposed on them by the PATI Act (s51)
- To provide guidance for the preparation of Information Statements and review them for compliance with the PATI Act, and to issue an order to bring a public authority into compliance (s7)
- To foster and encourage the publication by public authorities of information of interest to the general public about that public authority's functions and activities, beyond what is required by the PATI Act
- To monitor and provide guidance for the provision of other information under section 6 and, when needed, to issue an order to bring a public authority into compliance (s8)
- To maintain secrecy concerning all matters that come to the Information Commissioner's knowledge in the exercise of her functions; to only communicate any such matter to a person for the purpose of carrying out her functions under the PATI Act; and to ensure that any staff or advisors maintain the same secrecy (s53)
- To not disclose any information or documents obtained by the Information Commissioner or any person appointed or engaged under section 52 in the exercise of their functions except for the purposes of the PATI Act (s53)

- To keep the operations of the PATI Act under review and within two years of the PATI Act's implementation, prepare a written report, copied to the Minister, on an investigation public authorities' practices and procedures (s57)
- To, when necessary, carry out an investigation into the practices and procedures under the PATI Act of public authorities generally or one public authority in particular and prepare a report copied to the Minister and to any concerned public authority (s57)
- To prepare an Annual Report to be laid before each House of the Legislature (s58)
- To consult on the establishment of codes of practice for public authorities for the administration of the PATI Act and for the maintenance and management of records (s60)
- To conduct an independent review of decisions by public authorities under the PATI Act when sought by a requester (Part 6)

Section C: Services and Programmes [s5(1)c]

Services:

The Information Commissioner's Office provides the following services for the public and public authority:

- **Guidances:** written guidances for public authorities and the public on discrete topics to assist in the exercise of rights and responsibilities under the PATI Act, available on the ICO website (www.ico.bm)
- **Reviews:** the ICO will review and resolve disputes between a requester and public authority concerning the public authority's responsibilities under the PATI Act.
- **Publication:** The ICO is a repository under the PATI Act for all public authorities' Information Statements. We make these available on our website, www.ico.bm as well as in hard copy form available to the public at our office.
- **Inquiries:** The ICO also provides answers to general inquiries about the PATI Act, how to use it, and what its provisions mean. Members of the public and of public authorities may contact the ICO via phone (294-9181), email (info@ico.bm), our website (www.ico.bm), Facebook (Information Commissioner's Office for Bermuda), or drop-ins at our office (Valerie T. Scott Building, 60 Reid Street, Hamilton).

Programmes:

- **Public education programmes:** presentations to community groups, civic and business associations and other groups concerning the public's rights under the PATI Act and how to exercise those rights

- **Right to Know Week:** a week of public events celebrating the international Right to Know Day, September 28.

Section D: Classes of records and documents held [s5(1)d]

The classes (or types) of records described below are held by the ICO and date from the period of 2 March 2015 to today. The administrative records of the ICO are subject to the PATI the same as any other public authority.

The 'operational' records are records that we create or hold to fulfil our functions set out in the Information Commissioner's mandate in section 51 of the PATI Act. Note that according to section 4(1)(b)(iii) of the Act, the Act does not apply to the records obtained or created when we are carrying out our functions. The functions of the Information Commissioner, however, include duties such as tabling our Annual Report, public education, and so on. While not required by the PATI Act to disclose records related to these functions, the Information Commissioner is committed to disclosing as many of our records as possible and will do so voluntarily when appropriate.

Administrative classes of records:

- Human resource documents
- Financial records
- Travel records
- PATI Act Request Disclosure Log
- Information Technology, including website administrative records

Operational classes of records:

- Research files for practices and procedures for ICO
- Research files for legal issues arising under the PATI Act
- Annual reports (and related records)
- Information Commissioner Reviews and related records: requests for review, parties' submissions, legal research, investigative records, records related to negotiations, mediation and formal hearings, and final resolutions
- Correspondence
- Compliance records for Information Statements and 'other information' listed in s.6 of the PATI Act: records related to the Information Commissioner's assessment of whether an Information Statement satisfies the requirements of the PATI Act and any subsequent orders to achieve compliance; records related to whether a public authority has met the requirements to provide public access to 'other information' prescribed in s.6 of the PATI Act and subsequent compliance orders
- ICO Guidances and related research materials

- Public awareness and education materials
- Public Relations records
- Investigative records: records related to the Information Commissioner's investigation into a public authority's practice and procedures under the PATI Act and assessment of its compliance; records related to any subsequent orders to achieve compliance; and written reports of the investigation

Section E: Administrative manuals [s5(1)e]

Administrative manuals

Government of Bermuda's Conditions of Employment and Code of Conduct

Bermuda Public Services Union Collective Agreement

Financial Instructions

Contracting with the Information Commissioner: Information for prospective contractors

Contractor guidelines: For temporary contractors and advisors

Public Service Commission Regulations

Confidentiality Policy

Register of Interests: Policy & Guidance

Employee Guidelines: For temporary employees and interns

Operational manuals

ICO Reviews Policy & Handbook: Reviews conducted under Part 6 of the PATI Act

Investigations Policy: Investigations conducted under Section 57(3) of the PATI Act

Register of interests: Policy and Guidance

Employee Guidelines: For temporary employees and interns

Contractor Guidelines: For temporary contractors and advisors

Section F: Decision making documents [s5(1)f]

ICO Reviews Policy and Handbook: Reviews conducted under Part 6 of the PATI Act

ICO Investigations Policy: Investigations conducted under Section 57(3) of the PATI Act

Any additional decision making documents will be published on our website.

Section G: The Information officer [s5(1)g]

Answer Styannes
 Investigation Officer
 Information Commissioner's Office
 Valerie T. Scott Building
 60 Reid Street

Hamilton, Bermuda HM12
(Tel) 441-294-9181
www.ico.bm
Office hours: Monday – Friday: 9:00 to 5:00

Section H: Any Other Information [s5(1)h]

As new manuals, policies, and procedures and other information for ICO are approved and adopted, they will be posted on the ICO website, www.ico.bm.

Section I: Any Other Information To be Provided? [s5(1)i]

The ICO's financial information will be posted regularly on its website, www.ico.bm, and is included in our Annual Reports.

Section J: Information Statement: Copies and Updates [s5(2,3,4,5)]

Date Information Statement was updated: 11 January 2019

Locations of Information Statement:

Confirm copies of Information Statement are available at the following sites:

- Your principal office: Information Commissioner's Office
Valerie T. Scott Building, 60 Reid Street, Hamilton HM 12 Y
- The Bermuda National Library; Y
- The Bermuda Archives; Y
- Available electronically, Y
- Website for public authority: www.ico.bm Y
- Have you published a notice in the Gazette indicating the places where the information statement is available for the public? Y
- With the Information Commissioner. Y

Sign and Date:



Gitanjali S. Gutierrez, Information Commissioner 7 June 2019

Document control sheet

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Summary of changes to document				
Date	Actioned by <i>(initials)</i>	Version updated <i>(e.g. v1.0-5 or v2.1-5)</i>	New version number <i>(e.g. v1.2-5 or 2.1-5)</i>	Brief description of changes <i>(e.g. updated paras. 8-12 to change head of public authority to Information Officer; reviewed the entire section on notice to third parties; corrected typos; reformatted to new logo/branding)</i>
8 September 2016	GSG	1.0	2.0	Reformatted to new logo; updates to Section A: Introduction (description of new legal right); Structure (updated 2016 figures), Organisational Chart (updated with new positions); Section B: Functions (minor language and structure edits) Obligations under PATI Act (remove bolding and brackets); Section C: Services and Programmes (updated to include more services); Section D: Classes of records held (new introduction paragraph); Section E: Administrative Manuals

				(additional published manuals included); and Section F: Decision making documents (additional published documents listed); Section G updated with new Information Officer and office address and office hours.
29 May 2018	GSG	2.0	2.1	Updated financial information throughout, office hours, organizational chart, and policies. Fixed typos.
11 January 2019	GSG	3.0	2.1.2	Updated organizational chart.
7 June 2019	ACS	3.1	3.1	Updated organizational chart; changed Responsible Manager.