

PATI Information Statement

Name of Public Authority: Office of the Privacy Commissioner for Bermuda

Introduction:

The Office of the Privacy Commissioner for Bermuda (PrivCom) 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 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.

PrivCom 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 office's education, guidance, and oversight role under the Personal Information Protection Act 2016 (PIPA).

PIPA section 34, “Restrictions on disclosure of information,” states in 34(1) that PrivCom “shall not disclose any information obtained in performing his [or her] duties, powers and functions ... except as provided in this section.” The section then describes circumstances when the Commissioner may authorise disclosure, such as for investigations or prosecutions. This means that some records we hold will not be subject to PATI Act disclosure. However, a public report will usually be issued after an investigation and actions will be described in our annual reports.

PrivCom’s general administrative records are subject to the PATI Act. To the greatest extent possible, these records will be posted on our website, www.privacy.bm, as they become available.

This Information Statement outlines the duties of the Privacy Commissioner for the public and also includes background on our office's 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]

PrivCom was established as a public office on 2 December 2016, when sections of PIPA relating to the the appointment of the Privacy Commissioner were enacted. The first Privacy Commissioner, Alexander White, took office on 20 January 2020.

PIPA protects the independence of the Privacy Commissioner, which is critical to the exercise of his or her oversight functions. Section 26(4) establishes that “the Commissioner shall not be subject to the direction or control of any other person or authority.”

The 2020-21 Approved Budget for PrivCom, prior to requested reductions due to COVID-19 public health factors, is \$567,258.

As of 1 August 2020, the Privacy Commissioner is the only engaged civil servant. PrivCom may engage technical and professional advisers as consultants in performing its duties.

Governing Legislation:

Personal Information Protection Act 2016 (PIPA)

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

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

PIPA section 29 describes the “General powers of the Commissioner”:

“29(1) The Commissioner is responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may—

- (a) conduct investigations concerning compliance with any provision of this Act;
- (b) make an order described in section 44 on completing an investigation whether or not a review is requested or an inquiry completed;
- (c) educate the public about this Act;
- (d) receive comments from the public concerning the administration of this Act;
- (e) engage in, or commission, research into anything affecting the achievement of the purposes of

- this Act;
- (f) comment on the implications for protection of personal information in relation to an organisation's existing or proposed programmes;
 - (g) approve binding corporate rules for transfers of personal information to an overseas third party under section 15 when the Commissioner considers the binding corporate rules provide a comparable level of protection for personal information as the protection required by this Act[;]
 - (h) issue formal warnings, admonish an organisation and bring to its attention any failure by the organisation to comply with this Act or agree a course of action with an organisation;
 - (i) give guidance and recommendations of general application to an organisation on matters relating to its rights or obligations under this Act;
 - (j) liaise and co-operate with domestic and foreign law enforcement agencies and regulators to the extent necessary to ensure that the purposes of this Act are achieved provided that there is no contravention of the Act;
 - (k) make recommendations to the Minister concerning the designation of any jurisdiction as providing a comparable level of protection for the purposes of section 15;
 - (l) make an order at his discretion to permit an organisation to transfer personal information to an overseas third party for use either on behalf of the organisation or for that overseas third party's own business practices, where the organisation has reasonably demonstrated that it is unable to comply with section 15(2) provided the transfer does not undermine the rights of the individual;
 - (m) establish or assist with the establishment of certification mechanisms and associated rules for the purpose of demonstrating compliance with this Act and may, without prejudice to his tasks and powers under this Act, delegate the operation of a certification mechanism to an independent certification body with the appropriate level of expertise in relation to the protection of personal information;
 - (n) charge such fees as he thinks fit for any services provided under this Act, not exceeding the prescribed maximum;
 - (o) do anything which reasonably appears to him to be incidental or conducive to the carrying out of his functions under this Act."

Other sections of PIPA describe specific tasks that PrivCom may perform in the course of our duties. As ours is a new office, many procedures are still being finalised, but we welcome questions from the public.

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

PIPA requires the Privacy Commissioner to submit an annual report to Parliament on the operation of the act.

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

To preserve the independence of PrivCom, PIPA states that "the Commissioner shall not be subject to the direction or control of any other person or authority" in the exercise of his or her functions.

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

PrivCom shares the same general obligations under the PATI Act as all public authorities:

- 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 Act [s61]
- To **designate one of its officers** to be the person to whom requests are directed [s62]

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

Services:

PrivCom provides the following services to the public regarding privacy rights as described by PIPA:

- **Guidance:** written guidance for public and private organisations and individuals on discrete topics to assist in the exercise of rights and responsibilities under PIPA, available free of cost on our website (www.privacy.bm);
- **Reports:** process to receive reports or complaints from individuals regarding potential violations of their privacy rights, free of cost;
- **Investigations:** process to engage with organisations that use personal information to determine compliance with PIPA, free of cost unless stated otherwise;
- **Orders:** written guidelines on behaviour that organisations must follow to comply with PIPA, free of cost;
- **Research and Publication:** analysis into the effects and consequences of violations of privacy rights and the appropriate steps to mitigate the risk of harm to individuals, free of cost; and
- **Inquiries:** PrivCom provides answers to general inquiries about PIPA and privacy rights, such as

what its provisions mean and how to effectively protect privacy. Members of the public may contact is via phone (543-7748 [-PRIV]), email (PrivCom@privacy.bm), our website (www.privacy.bm), LinkedIn (<https://www.linkedin.com/company/privcombermuda/>), Twitter (<https://twitter.com/PrivComBermuda>), or in person at our office by appointment (Maxwell Roberts Building, 4th Floor, 1 Church Street, Hamilton).

Programmes:

PrivCom provides the following programmes to the public regarding privacy rights as described by PIPA:

- Public awareness and education: presentations to community groups, civic and business associations, and other groups concerning individuals' rights under PIPA and how to exercise them; PrivCom participation is free of cost, though hosts may charge for attendance, and
- Privacy Innovation and Knowledge-Sharing (PINK) Sandbox: a programme in which PrivCom closely collaborates with businesses, organisations, or individuals engaged in unique or cutting-edge data use cases to allow innovation while respecting privacy rights, free of cost to participants.

Section D: Records and documents held [s5(1)d]

The classes (or types) of records described below are held by PrivCom and date from the period of 20 January 2020 to today. The administrative records are subject to PATI.

The “operational” records are records that we create or hold to fulfil our functions set out in PIPA, and due to confidentiality provisions in PIPA these records are not automatically subject to PATI. The functions of the Privacy Commissioner, however, include duties such as tabling our Annual Report and public education, and a public report will usually be issued after an investigation. While not permitted to disclose some records related to these functions, the Privacy Commissioner is committed to disclosing as many of our records as 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
- Research files for legal issues arising under the PIPA and other privacy laws and regulations
- Annual reports (and related records)
- Complaints, Investigations, and related records: requests, parties' submissions, legal research, investigative records, records related to negotiations, mediation, and formal hearings, and final resolutions, assessment of its compliance; records related to any subsequent orders to achieve compliance; and written reports of the investigation
- Correspondence
- Guidances and related research materials
- Public awareness and education materials

Section E: Administration (all public access) 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

[Additional manuals as developed or adopted.]

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

Policies and documents relating to investigations and orders are still in development, pending PIPA coming into operation. Once these documents are completed, this Information Statement will be updated.

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

Alexander White
Privacy Commissioner
Office fo the Privacy Commissioner
Maxwell Roberts Building, 4th Floor
I Church Street

Hamilton, Bermuda HM11

Tel: 441-543-7748 [-PRIV]

PrivCom@privacy.bm

www.privacy.bm/PAT

Office hours: Generally, Monday – Friday from 9:00am to 5:00pm. However, due to recent public health factors an advance appointment is recommended to confirm.

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

PrivCom will endeavour to publish all public information in its annual reports and on the PrivCom website, www.privacy.bm.

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

PrivCom will endeavour to publish all public information in its annual reports and on the PrivCom website, www.privacy.bm.

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

Every public authority shall update its information statement at least once a year, and make it available for inspection by the public at reasonable times by [s5(1-5), PATI Act]:

Date Information Statement was updated: 11th August 2020

Locations of Information Statement:

Copies of this Information Statement are available at the following sites:

- o PrivCom’s principal office: Maxwell Roberts Building, 4th Floor,
One Church Street, Hamilton HM11 Y
- o The Bermuda National Library; Y
- o The Bermuda Archives; Y
- o Available electronically on website for public authority, www.privacy.bm/PATI Y
- o Have you published a notice in the Gazette indicating the
places where the information statement is available for the public? Y
- o With the Information Commissioner. Y

Signed and Dated:



Privacy Commissioner

11th Aug 2020