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**BEESMONT**

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Gretchen Tucker is a Bermuda and UK (non-practicing) qualified barrister.

Her diverse practice emphasises policy and legal solutions to build commercial resilience and achieve strategic outcomes for Bermuda organisations. Her work includes advising on the alignment of compliance programmes with Bermuda law and the development of supporting documentation, such as privacy notices, policies and procedures.

She provides advice and representation in connection with regulatory and statutory compliance, administrative decision making and processes, statutory interpretation, and legal reform. She also advises clients on their interactions with Bermuda Government departments and independent supervisory regulators.

Gretchen works closely with our Corporate attorneys to advise commercial organisations on transactional employment, governance and privacy issues arising from mergers & acquisitions, business re-organisations and strategic planning.

She currently sits as the Chairperson of the Bermuda Bar Council Sub-Committee for the Advancement of Privacy Law and Appropriate Regulation of the Legal Industry and is the Co-Chair of the IAPP Bermuda Knowledge Net Chapter.



## GRETCHEN TUCKER

### Practice Groups

- Privacy, Security & Information Law
- Regulatory & Compliance
- Employment & Talent Management

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- Public Law
- Privacy by Design
- Workplace Privacy
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# KEY BEESMONT CONTACTS

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# PRIVACY DEVELOPMENTS DURING COVID-19

## 2020 activity of Bermuda's first Privacy Commissioner during the Pandemic

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On 13 December 2019, the appointment of the island's first Privacy Commissioner, Mr. Alexander McD White, was announced by the Governor of Bermuda. The appointment occurred after the Governor's consultation with the Premier of Bermuda (who was, in turn, required to have first consulted with the Opposition Leader) in accordance with the supervision requirements in Part 5 of the [Personal Information Protection Act 2016](#) ("PIPA").

This appointment became effective on 20 January 2020. In accordance with PIPA, the Privacy Commissioner is subject to a five (5) year term and may be re-appointed for a further period of five (5) years. The legislation also protects the independence of the Privacy Commissioner, which is critical to the exercise of his oversight functions, by establishing that "the Commissioner shall not be subject to the direction or control of any other person or authority."

### A Long Awaited Appointment

The independent supervisory authority, the Office of the Privacy Commissioner for Bermuda ("PrivCom"), was technically established as a public office on 2 December 2016. This establishment coincided with certain sections of PIPA, which related to the appointment of the Privacy Commissioner, coming into force to enable recruitment for the post holder to take place.

Over the years that followed, the absence of any appointed Privacy Commissioner led to significant uncertainty concerning the timeframe for the remainder of the legislation to come into force, the regulatory approach that would ultimately be taken and, in the interim, the function to be played by the Government of Bermuda and existing independent regulatory offices to support privacy awareness and protect data subjects on island.

### COVID-19 Health Crisis: The 2020 Black Swan

In late December 2019, the first report and subsequent outbreak of COVID-19 occurred thousands of miles away from Bermuda in Wuhan, China.

By 20 January 2020, the effective date of the appointment of the Privacy Commissioner, the first confirmed cases occurred in Japan, South Korea and Thailand. The following day, the first confirmed case in the United States was reported in Washington State.

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Notwithstanding the uncertainty surrounding the future trajectory of COVID-19 and the on-going local response to "flatten the curve", the appointment of the Privacy Commissioner has been a significant catalyst for industry privacy awareness on island

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As the number of confirmed cases around the world rose, the global health crisis shifted local regulatory focus from PrivCom and other regulatory developments to the immediate need for swift enactment of legislative measures to preserve residents' health.

By 18 March 2020, Bermuda's first two confirmed COVID-19 cases were identified.

Shortly thereafter, the island entered into lockdown. Government workers who were not directly involved with COVID-19 management and operations were required to work from home. Private businesses were initially encouraged to ask their employees to work from home and this was subsequently made a mandatory requirement under Bermuda law. The Bermuda LF Wade International Airport closed for in-coming passenger flights on 20 March 2020 and a curfew was also introduced, with the Royal Bermuda Regiment carrying out road checks as part of the effort to limit the spread of the virus and identify persons in breach of COVID-19 quarantine rules.

After considerable active monitoring of confirmed cases on island and the development of health and security strategy, the island commenced a phased re-opening

on 2 May 2020 to allow for limited business, with an expansion of services permitted on 21 May. On 11 June 2020, the island entered the third re-opening phase of Moving to Normal which introduced the end of mandated work from home, the resumption of childcare services and operation of commercial licensed vessels. The final re-opening phase, New Normal, commenced on 1 July 2020 to coincide with the re-opening of the Bermuda LF Wade International Airport. Throughout this transitional period, curfew remained in place and was slowly shortened as the island successfully completed each re-opening phase. Curfew was finally lifted on 20 July 2020.

At this time, Bermuda remains diligent in monitoring global developments of COVID-19 through the World Health Organization and with its regional public health partners – Public Health England Pan-American Health Organisation and the Caribbean Public Health Agency.

Notable legislative measures adopted by Bermuda as part of its COVID-19 response include the issuance of a [Proclamation of State of Emergency](#) by the Governor of Bermuda under the Bermuda Constitution Order 1968 (effective from 1 April – 30 June 2020) and a series of Public Health (COVID-19) Emergency Orders declared by the Government of Bermuda (effective from [6 a.m. on 30 June](#) – [6 a.m. on 27 October 2020](#) unless extended in accordance with public health law).

### Industry Impact in Bermuda and Positive Response

Notwithstanding the uncertainty surrounding the future trajectory of COVID-19 and the on-going local response to “flatten the curve”, the appointment of the Privacy Commissioner has been a significant catalyst for industry privacy awareness on island.

This is due, at least in part, to the high level of activity that the Privacy Commissioner has engaged in both within the jurisdiction and overseas to promote awareness of PrivCom and the approach to be taken by the supervisory authority to business preparations for the new statutory privacy framework.

Support for the work of the Privacy Commissioner and his early engagement from industries on island has been positively received with stakeholders generally recognising the benefit of the Privacy Commissioner's willingness to provide guidance and operational direction in advance of the substantive sections of PIPA coming into force.

### Notable Activity of the Privacy Commissioner

To date, the Privacy Commissioner has engaged in a plethora of activities, including:

- issuing [Guidance on Privacy Issues in Public Health Emergencies](#) dated 18 March 2020) and [Guidance on Collection and Usage of Data for Contact Tracing](#) dated 19 June 2020;

- fostering the establishment of a IAPP (International Association of Privacy Professionals) [KnowledgeNet Chapter for Bermuda](#) to promote professional network-working and educational opportunities for those interested in careers in privacy;
- meeting with local industry and representative groups to establish working relationships and open dialogue;
- appearing on the radio programme “Mind Your Business” hosted by the Bermuda Economic Development Corporation (“BEDC”) to discuss PIPA for SMES (small and medium-sized businesses and start-ups);
- acting as a panelist on online webinars, including the BEDC’s free webinar, *Privacy & Security considerations for Businesses Post-COVID-19*, to promote understanding of privacy and cybersecurity initiatives for businesses in pandemic times; and
- delivery of in person addresses and opening remarks at various privacy-focused events on island.

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In June 2020, the Privacy Commissioner recognised a series of privacy courses facilitated by a private training provider as “providing training that is appropriate to the knowledge, skills, and abilities needed for an individual to perform the duties of a Privacy Officer” under PIPA. The first course completion ceremony was held at the start of September with the Privacy Commissioner in attendance in person.

These steps, alongside the issuance of regular publications in the form of educational materials, press releases and newspaper articles, have contributed to public appreciation of the intended role of PrivCom, the value of privacy in every-day business practices and will serve to integrate PrivCom into the fabric of business operations on island.

### Digital Communication during Uncertain Times

Public awareness of PrivCom has been further facilitated by the establishment of the authority's official social media pages on LinkedIn and Twitter which regularly post information about the office, its interns and initiatives in partnership with the local and international community. In spring 2020, the official website of PrivCom (<https://www.privacy.bm/>) was launched, providing yet another avenue for digital communications.

Whilst not unusual for Bermuda regulators to establish official websites, the website launch was particular timely, given that the island-wide work from home arrangements (known globally as #WFH) were established shortly after the appointment of the Privacy Commissioner became effective. These necessary requirements, instituted by law in March 2020, curtailed residents' rights to freedom of movement and assembly and could have indirectly limited information about PrivCom. Due to the establishment of the website however, data subjects can easily access the majority

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Commissioner White highlighted his objective of having PrivCom demonstrate that a European-style privacy law could work in a *business friendly way* and his belief that Privacy Officers in Bermuda will become well placed to transition to other countries based on their experience on island

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of materials published by the Privacy Commissioner in a singular location at any given time. The PrivCom website also promotes privacy within the context of Bermuda iconic imagery and local concepts, a nod to the island's unique culture which has traditionally set the jurisdiction apart as a [go-to-destination](#) for tourism and business commerce.

For international businesses, the timing of the website is also key, enabling stakeholders to keep track of developments on island and to have direct access to the Privacy Commissioner using Skype for Business with the click of a button in New York, London or wherever else their WFH arrangements may be based. Digital nomads and students considering relocating to the island under the [Work from Bermuda Certificate](#) will also find the information on the website useful.

### Developing Infrastructure to Support European-Centric Privacy Law

In May 2020, Commissioner White was interviewed on IAPP's [Privacy Advisor Podcast](#) about his experience thus far as the first Privacy Commissioner of Bermuda during COVID-19 and his prior experience in the insurance industry working on cyber liability and as the Deputy Chief Privacy Officer for the state of South Carolina.

A key objective discussed by the Privacy Commissioner was the desire to have a Bermuda regulatory office that could lead community conversations about privacy issues and values, while recognising the unique demographic of industries on island – ranging from sophisticated multi-national businesses (such as the insurance and reinsurance sector) to localised family-owned or independent small businesses.

Commissioner White also highlighted his objective of having PrivCom demonstrate that a European-style privacy law could work in a *business friendly way* and his belief that Privacy Officers in Bermuda would become well placed to transition to other countries based on their experience on island. He reflected upon his blog, [The Mid-Atlantic Privacy Compass](#), which acknowledged global data frameworks and supported the integration of Bermuda privacy law requirements into existing compliance programmes for “regulatory interoperability”.

He confirmed that he had been kept busy with logistical planning for PrivCom's infrastructure and building relationships with local stakeholders. He had even spent time liaising with international privacy regulators based in other small jurisdictions that would have a similar profile to Bermuda (such as Jersey, Guernsey and Gibraltar) for insights and policy development to start up PrivCom.

The Privacy Commissioner confirmed that the pandemic had disrupted his on-boarding process and delayed staffing plans for PrivCom, as the Government of Bermuda had been required to give priority to financing COVID-19 related expenditure. Notwithstanding this, he remained positive about the future prospects of the office, noting the warm welcome that he had initially received (and continued to receive on island). He further highlighted the on-going requests for assistance that PrivCom was receiving from the community, where individuals were already approaching him with privacy-centric solutions.

### First PATI Information Statement

In August 2020, PrivCom issued its first [Information Statement](#), a document required under Bermuda's access to information law, the Public Access to Information Act 2010 ("PATI").

Traditionally, the purpose of the Information Statement has been understood to be for the facilitation of the public's right of access to records held by public authorities. However, the Privacy Commissioner also designed the Information Statement to help viewers understand the office's education, guidance, and oversight role under PIPA.

The Information Statement confirmed that the 2020-21 Approved Budget for PrivCom, prior to requested reductions due to COVID-19 public health factors, \$567,258. It further confirmed that, at the date of its publication, the Privacy Commissioner remained the only engaged civil servant for the office and that PrivCom could be engaging technical and professional advisers as consultants in performing its duties.

### The Road Ahead: 2021 on the Horizon

As of the date of this publication, no announcement has been made confirming the timing of any formal guidance to be issued by the Privacy Commissioner or Codes of Practice to be issued by the Bermuda Government Minister responsible for information and communication technologies policy and innovation. Similarly, there has been no confirmation of the proposed dates for the substantive provisions of PIPA to come into force.

The COVID-19 pandemic, coupled with the activity of the Privacy Commissioner in the first year of his appointment, however has undoubtedly raised awareness in Bermuda of the importance of privacy considerations in every-day living and operational business strategies. Already, a succession of practitioners and privacy officer certifications and many organisations are engaging in reviews of existing privacy measures and auditing the lifecycles of personal information and sensitive personal information that are currently used as part of their operations..

This heightened awareness will likely continue for quite some time as the global battle to manage the spread of the coronavirus continues. In the interim, it is expected that the Privacy Commissioner will continue to dedicate his time to building partnerships and awareness of PrivCom in the local and international community.



# TIMELINE: 2015-2020

## Historical Establishment of The Office of the Privacy Commissioner for Bermuda

- 10 Jul 2015 The Draft Model of PIPA is published by The Department of E-Commerce, Ministry of Economic Development.
- 01 Jul 2016 The Draft PIPA Bill is tabled in the Bermuda Parliament.
- 01 Jul 2016 Issuance of a [Ministerial Statement by the Minister of Economic Development on the Draft PIPA Bill](#).
- 21 Jul 2016 Legislative Brief on the Draft PIPA Bill delivered by the Minister of Economic Development .
- 27 Jul 2016 PIPA receives the Royal Assent. As Bermuda is a British Overseas Territory, all parliamentary bills must be given Royal Assent on behalf of the British Monarch, as represented by the Governor of Bermuda, in order to become law.
- 02 Dec 2016 Discreet administrative provisions of PIPA come into force to enable the recruitment of the Privacy Commissioner and the creation of the Office of the Privacy Commissioner for Bermuda, the new independent supervisory authority for the enforcement of PIPA.
- 03 Feb 2017 Issuance of a [Ministerial Statement by the Minister of Economic Development on the Implementation of PIPA's Administrative Provisions](#).
- 13 Dec 2019 The Governor of Bermuda announces the appointment of the island's first Privacy Commissioner, Mr. Alexander McD White.
- 20 Jan 2020 The appointment of the Privacy Commissioner becomes effective.
- 11 Aug 2020 The Information Statement of the Office of the Privacy Commissioner for Bermuda is issued under the Public Access to Information Act 2010 confirming the staffing and financial budget of the office.

