

# Guidelines for Public Authorities

Written submissions for Section 57(3) investigations

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## Introduction

1. This document provides guidelines for you—the public authority—when working with the Information Commissioner’s Office (“Information Commissioner”; “ICO”) to establish and confirm the factual findings for an investigation under Section 57(3) of the Public Access to Information (PATI) Act 2010.
2. To familiarize yourself with the investigation process under Section 57(3), our approach and our expectations of you, please read these guidelines alongside our **Investigations Policy**.
3. These guidelines specifically address:
  - how we will strive to work with you to come to an agreement about the factual findings;
  - your opportunities to review and confirm the Information Commissioner’s factual findings; and
  - how you should approach providing any written information.

## Approach

4. Our aim is to establish an accurate, complete and clear understanding of how a public authority is fulfilling its obligations under the PATI Act with its practices and procedures. This will enable the Information Commissioner to provide you with an effective evaluation of your practices and procedures, as well as to offer you guidance and practice recommendations, if needed, to improve them. The ICO will also strive to identify and spotlight any best practices you are using that could prove useful to other public authorities.
5. We ask for your full cooperation and good faith in this process.
6. In some situations, the ICO will obtain the basis for the Information Commissioner’s factual findings through direct discussions with you. No written submissions will be necessary.
7. When this occurs, you will have an opportunity to review, clarify, correct and/or confirm the Information Commissioner’s factual findings. If you disagree with the Information Commissioner’s factual findings, or if we cannot come to an agreement, you may decide that you would like to make formal written submissions for consideration.
8. In other situations, the ICO may provide you with a list of written questions designed to assist the Information Commissioner in establishing certain factual information. After submitting your answers, you will have an opportunity to review, clarify and/or correct the Information Commissioner’s factual findings before they are adopted. If you disagree with the Information Commissioner’s factual findings, or if we cannot come to an agreement, you may decide to make formal written submissions for consideration.

## General Guidelines for all Written Submissions

9. The following guidelines apply to all written submissions sent to the ICO for a Section 57(3) investigation. You may be making formal written submissions in support of your factual assertions to clarify or correct the Information Commissioner's factual findings. Or you may be answering questions from the ICO intended to assist the Information Commissioner to establish certain factual information.
10. Formal written submissions to support your factual assertions may take the form of affidavits, expert or other factual reports, and other evidence. Signed documents should be sent or delivered in hard copy to the attention of the Information Commissioner and marked "Confidential".
11. All written submissions received by the ICO for Section 57(3) investigations will be treated as confidential ICO work records. They will not be disclosed publicly and are protected by Section 4 of the PATI Act, which states that the ICO's operational records are not subject to disclosure.
12. The Information Commissioner and her staff involved in a Section 57(3) investigation, understand, and are bound by, the statutory obligation to maintain secrecy under Section 53 of the PATI Act.
13. The ICO will use the factual information contained in your submissions to form the basis of the Information Commissioner's factual findings. The Information Commissioner's factual findings may be included in an Information Commissioner's Report on the investigation (under Section 57(4) of the PATI Act). If an investigation report is written, it will be public and appended to the Information Commissioner's Annual Report.
14. To be clear, the information you provide may be used in the factual findings and may be included in an Information Commissioner's Report under Section 57(4), but the actual record of your answers will be held confidentially by the ICO.
15. In your written submissions, all individuals should be identified by **position or title**, and not by personal name, i.e., "front desk Administrative Assistant" or the "Information Officer," and not "Jane Pitcher". If you need to name someone from outside the public authority, please contact the ICO in advance to agree on the best way to identify their relationship to the public authority in your submissions.
16. We are evaluating your practices and procedures as a public authority to facilitate the Information Commissioner's ability to make good practice recommendations. We will identify areas of needed improvement within your practices and procedures and make recommendations for any needed changes, i.e., practice recommendations. The ICO's role is not to identify weaknesses or areas of improvement for, or to place blame upon, any particular individual within a public authority. Thus, we encourage you to be direct and candid in your written submissions to the ICO.

## Specific Guidelines for Answering ICO Questions

17. The Information Commissioner may decide to send out written questions to a public authority to assist her to establish certain factual information. The following guidelines apply specifically to answering questions from the ICO to support our fact-finding.
18. To cooperate with a Section 57(3) investigation, we ask that you provide full written answers to **all** the questions asked. If you choose not to answer a question, you should give reasons why you have not answered.
19. Your answers should be factual, accurate, comprehensive and clear. You may find it helpful to give additional documentation to support your written answers.
20. Please deliver or send hard copies of your answers to the Information Commissioner's attention and mark them "Confidential". If you prefer to send your answers via email, please contact the ICO.
21. Your answers do not need to be in order of the questions we ask, but for ease of reference, we ask you make it clear which question you are answering.
22. If you find it helpful, you can append supporting documents to the end of your written answers, but be sure to reference which question they support within your answer if it is not clear.
23. You will have **ten (10) working days** to send us your written answers and supporting documents. The Information Commissioner may extend this to fifteen (15) working days if the investigation is complex.
24. If you need additional time to send us your answers, please write to the Information Commissioner within the submission deadline, outlining your reasons for requesting an extension.
25. After reviewing your submissions and any other factual information, the ICO will ask you to review and confirm the factual findings. The **Investigation Policy** describes this process in more detail in Step 4 of the investigation process, "Establishing and Confirming the Factual Findings".
26. If no substantive response (or a reasoned request for an extension of time) is received by the deadline, it will be assumed that you have no submissions to put forward and the Information Commissioner will take this into consideration when deciding the facts and conclusions of her investigation.
27. If you are still unsure about how you should approach providing written submissions for an investigation under Section 57(3), or if you have specific questions about the content of your formal written submission or answers to questions, we invite you to contact us directly by telephone, 294-9181, or email, [info@ico.bm](mailto:info@ico.bm).