

## Guidance

Timeframes for providing access to records:  
section 14 and Part 2

# Table of Contents

Overview .....	3
Timeframe for providing access to records: What does the law say?.....	4
Background on deciding when to grant access to a record.....	6
Section 14.....	6
Time limit for making a decision on a PATI request .....	7
Time limit for providing access to record after a decision .....	7
When the requester does not ask for an internal review.....	7
When the requester asks for an internal review .....	8
Practical challenges under section 14.....	9
Part 2 of the PATI Act: making a record routinely available .....	10
Full record is routinely available when a 'PATI request' is received.....	10
Full record becomes routinely available while a PATI request is pending .....	11
Part of the record becomes routinely available while the PATI request is pending .....	12
More information .....	12

## Overview

1. This is part of a series of Guidances issued by the Information Commissioner's Office (ICO), which provide details on specific areas of the Public Access to Information (PATI) Act 2010. The Guidances aim to help public authorities fully understand their obligations under the PATI Act and to promote good practice.
2. The ICO Guidances provide our *general* recommended approach on the application of the relevant PATI Act provisions and the matters we will take into account when exercising functions and powers under the PATI Act.
3. Please remember that all requests for records under the PATI Act must be considered on a case-by-case basis. Similarly, the Information Commissioner's decisions on applications for review are based on the specific circumstances and merits of each application.
4. The ICO will revise our Guidances on an annual basis, or sooner if needed, when the Information Commissioner and the Courts issue new decisions and when new legislative changes take effect.
5. This particular Guidance explains the timing options for a public authority once it has decided that a record can be made public. The Guidance outlines the applicable law and background—and gives practical advice and encouragement—for how public authorities should determine the timing of granting access to records in individual PATI requests.
6. Specifically, this Guidance discusses how to apply the deadlines in section 14 for PATI requests for records. It also talks about when a public authority may wish to, and can appropriately, make a record routinely available, consistent with section 2 and Part 2, before the expiration of the deadlines contained in section 14.
7. Please note that this Guidance does not consider time periods for requests involving a notice to third parties (s.39) or requests to amend a record of personal information (s.19). These provisions have specific timeframes, and will be discussed in separate ICO Guidances.

## Timeframe for providing access to records: What does the law say?

8. The overarching purpose of the PATI Act is set out in section 2 (emphasis added):

### **Purpose**

2 The purpose of this Act is to—

- (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; [and]
- \* \* \*
- (e) have more information placed in the public domain **as a matter of routine**.

9. Part 2, particularly in sections 6 and 10, emphasises the need to make information routinely available to the public—both information Part 2 requires to be published and information it encourages to be published—to reduce the need to rely on the PATI Act. Section 6 states (emphasis added):

### **Provision of other information**

6 (1) A public authority shall provide information to the general public about information it holds, on an annual basis, by—

- (a) print media;
- (b) radio media;
- (c) television media; or
- (d) online web-page,

and on how to access information held by the public authority, **to enable the public to have minimum need to resort to this Act for obtaining information held by a public authority**.

10. Section 10 mandates the Information Commissioner to encourage public authorities to make information routinely available that is of relevance or interest to the general public:

### **Role of Commissioner generally under [Part 2 Provision of Information by Public Authorities]**

10 The Commissioner shall foster and encourage the publication by public authorities of information of relevance or interest to the general public in relation to the activities and functions of the authority generally, in addition to the information that is required to be

11. Section 12 of the Act defines the substantive right of Bermudians and residents of Bermuda to have access to records held by public authorities and requires all public authorities to respond to requests completely, accurately and in a timely manner. Section 12 states (emphasis added):

**Access to records**

12 (1) Subject to this Act, every person who is a Bermudian or a resident of Bermuda has a right to and shall, on request, be given access to any record that is held by a public authority, other than an exempt record.

(2) Public authorities shall make every reasonable effort to—

\* \* \*

(b) **respond to requests completely, accurately and in a timely manner.**

12. Section 14 establishes a deadline by which public authorities must provide access to a record:

**Decision on request**

14 \* \* \*

(3) Subject to subsection (4), where the decision is to grant a request, the public authority concerned shall provide access to the record concerned in accordance with section 17 as soon as possible after the date when the period under section 42 for applying for a review of the decision has expired without an application having been made [*currently calculated as six (6) weeks from notification of the decision or from date the public authority was required, but failed, to take action*].

(4) Where an application has been made under section 41 for [an internal] review of a decision to grant a request, the public authority concerned shall provide access to the record concerned in accordance section 17 [Manner of access to records] as soon as possible after—

- (a) the date when the period under section 45 for applying for a review [by the Information Commissioner] of a decision made [on an application for an internal review] under Section 43 has expired without an application having been made [*currently calculated as six (6) weeks from notification of the decision or from date the head of the public authority was required, but failed, to make a decision*]; or
- (b) if an application under section 45 has been made [for a review by the Information Commissioner], the date when a review under Part 6 in respect of a decision made under section 43 has been completed [*currently not set in the PATI Act*].

13. Finally, the PATI Regulations 2014 speak of providing access to a requested record ‘as soon as practicable’ no later than six weeks from the date the request is received, unless time is extended. Although the Regulations were made more recently, regulation 4 is inconsistent with section 14 of the Act so the Act prevails.

#### **Provision of Access**

- 4 A record shall be provided to the applicant **as soon as practicable**—
- (a) not later than six weeks from the date the request is received by a public authority; or
  - (b) where an additional six weeks extension has been granted in accordance with section 15(1) of the Act, not later than six weeks from the date the extension is granted by a public authority.

14. Taken together, both Part 2 and Part 3 of the PATI Act inform a public authority’s decision about time periods when dealing with a PATI request. A public authority should not apply the deadlines under section 14 in Part 3 without *also* considering other obligations under the PATI Act.

## Background on deciding when to grant access to a record

15. At any time when a public authority decides that the public can have access to a record, Parts 2 and 3 of the PATI Act offer a range of options about when to provide access to that record.
16. Section 14 sets an outer limit, or deadline, for how long a public authority can take to give access to the record. Part 2 offers an option of making records publicly available sooner.
17. With each PATI request, a public authority should consider these options and decide—on the basis of its obligations under the PATI Act, its own governing legislation or regulations, its customer relations, and the circumstances of the individual record—what would be the most appropriate time to make the record available.
18. The purposes of the PATI Act should encourage public authorities to look at their options and to take the most effective approach to providing the public with access to public records under the circumstances in individual situations.

## Section 14

19. It is helpful to view the times under section 14 as outer *deadlines*—i.e., the longest time the public authority can properly take to act under the PATI Act, without an extension and

without risking an adverse decision by the Information Commissioner on review. This applies for the time limit both (a) for making a decision on a PATI request and (b) for providing access to a record after a decision.

### **Time limit for making a decision on a PATI request**

20. Section 14(1) requires the public authority, through its Information Officer, to make its initial decision on a PATI request and notify the requester within six weeks—so no later than six weeks—of receipt (or deemed receipt) of the request. This is the longest period of time the public authority can take for making a decision and for notifying the requester, unless time is extended under section 15. A public authority always has the choice of acting sooner.
21. In practice, public authorities should aim for prompt decisions on requests and the Information Commissioner encourages this. Section 12(2)(b) requires public authorities to make every reasonable effort to respond to requests completely, accurately, and in a timely manner.

### **Time limit for providing access to record after a decision**

22. Once the public authority decides to give access to a record, it can potentially take a further six weeks or longer for the requester to get access under section 14. Section 14 sets time limits in two situations: 14(3) applies when the requester *does not* ask for an internal review and 14(4) applies when the requesters *does* ask for an internal review.

### **When the requester does not ask for an internal review**

23. Under section 14(3), the public authority must give access to the record as soon as possible after the time for asking for an internal review has passed, without the requester asking for a review. Currently, this period is six weeks from the notification of the decision.



An **internal review** is a process conducted by the head of an authority, who is required to consider with ‘fresh eyes’ any decision (or failure to act) by the public authority on the request. The head of the authority then issues a new decision.



24. For example, this would mean that when the requester does not ask for an internal review, the *maximum* times for access (without an extension under section 15) could be:

Deadline for the Information Officer’s decision	6 weeks (42 days)
Deadline for requester to apply for internal review	6 weeks (42 days)
<b>Maximum time before access under s. 14(3)</b>	<b>12 weeks (84 days)</b>

25. When applying section 14(3), the public authority should offer to complete all of the logistics for access before the deadline.

26. For example, section 14(1)(b) requires the public authority’s decision to explain any fees payable for access to the record. As long as the requester pays the fees, the public authority should also go ahead and prepare the record in the requested format before the deadline. If the public authority needs to provide access in a different format, it should arrange this with the requester ahead of the deadline.

### **When the requester asks for an internal review**

27. Under section 14(4), when the requester asks for an internal review by the head of the authority, the public authority must provide access as soon as possible after the time period has passed for seeking an independent review by the Information Commissioner of the head of the authority’s decision, without the requester asking for the Information Commissioner’s review. Currently, the head of the authority has up to six weeks to make a decision and then the time for the requester to ask for a review by the Information Commissioner adds an *additional* six weeks on top of this.

28. For example, this would mean that when the requester asks for an internal review but not for a review by the Information Commissioner, the *maximum* times for access (without an extension under section 15) could be:

Time for the Information Officer’s decision	6 weeks (42 days)
Time for requester to apply for internal review	6 weeks (42 days)
Time for head of authority to make decision	6 weeks (42 days)
Time for requester to apply for IC review	6 weeks (42 days)
<b>Maximum time before access under s. 14(4)(a)</b>	<b>24 weeks (168 days)</b>

29. Or, if the requester asks for a review by the Information Commissioner and no early resolution is possible to settle the application, access shall be provided after the date of the Information Commissioner's decision. The PATI Act does not set a deadline for decision by the Information Commissioner.

### **Practical challenges under section 14**

30. Since the PATI Act has gone into effect, public authorities and requesters have encountered an inconsistency in its provisions, caused when the time limits for providing access to a record in section 14 are applied in isolation from the rest of the PATI Act.
31. On the one hand, the PATI Act encourages the timely, proactive, and routine provision of information to the public in section 2 and Part 2, and particularly section 6, as set out above. The PATI Act also requires public authorities to make reasonable efforts to respond to PATI requests 'in a timely manner' in section 12.
32. On the other hand, when viewed alone, section 14 could be read as requiring a public authority that is *ready* to give a requester access to an entire record to wait to do so until the relevant six week period to file an application for a review has expired.
33. It is an inadvertent result that the PATI Act would *prevent* a public authority from providing a requester access to a record as soon as the public authority wanted to.
34. By looking only to section 14, the time before the public authority gives access to the record is drawn-out, achieving little gain for the authority and likely frustrating the requester. This delay can also damage the public authority's customer relations and its reputation for being open and transparent.
35. An additional unintended consequence of section 14 could occur when a requester who is anxious to get a record gives up the right to ask for an internal review of some other aspect of a public authority's actions, simply to hurry along the time under section 14.
36. The requester could still make any desired challenges to how the request was handled, either by seeking a review of out of time or by filing a new request for additional records. But requesters should not have to choose between receiving a record in a timely manner consistent with the purpose of the PATI Act and timely consideration of any challenges they want to raise.
37. Legislative amendments are the most appropriate means of addressing what appear to be unintended consequences of section 14, and we should expect future amendments as the PATI Act is put into practice.

38. In the interim, and consistent with the purposes of the PATI Act and the Information Commissioner’s mandate in section 10, this Guidance encourages public authorities to consider section 14 along with Part 2 and the purposes of the PATI Act, to prevent unnecessary delay of access to records and to make records routinely available even if the time for review is still pending.
39. Section 14 set out the *maximum* time allowed for compliance for providing access to a record requested under the PATI Act. Part 2 of the PATI Act allows public authorities to take a more proactive, efficient, and effective approach to providing information to the public by making records routinely available and accessible to the public before the expiration of the section 14 deadlines, in appropriate circumstances.

## Part 2 of the PATI Act: making a record routinely available

40. Part 2 of the PATI Act allows the public authority to make a record routinely available when the public authority is first presented with a request for a record, or is in some stage of processing a PATI request.

### **Full record is routinely available when a ‘PATI request’ is received**

41. When the public authority first receives a ‘PATI request’ for a record, the initial question it should ask is whether the requested information is, or can be made, routinely available under section 6. If so, a PATI request is unnecessary to access the record in the first place.

**Note:**

When multiple records are part of a single PATI request, the public authority may decide that some of the records are routinely available and others need to be accessed through a PATI request.

42. The Information Commissioner recommends this approach regardless of the written form of the request. So, even if someone submits the public authority’s ‘official’ PATI request form, the public authority should first ask itself if a PATI request is necessary to access the record(s).
43. The PATI Act itself and the Information Commissioner encourage proactively providing information to the public without the necessity of a PATI request.
44. The public authority should make the record available promptly and in a routine manner.

## Full record becomes routinely available while a PATI request is pending

45. Alternatively, the public authority may decide for a number of reasons that the request needs to be treated as a PATI request under Part 3. But at some point during the initial decision or internal review, the public authority may realise that the entire record can be made routinely available under Part 2.
46. As described above, section 14, applied alone, will unnecessarily delay access to a record that otherwise could now be made routinely available. The PATI Act does not require the public authority to hold onto a record simply to allow the statutory deadline in section 14 to run out.
47. In such instances, the public authority can proactively make a record routinely available consistent with section 6 and Part 2, and outside the context of the PATI request. Nothing in the PATI Act precludes the public authority from making records routinely available that are the subject of a PATI request.
48. For example, the public authority may realise that it can make the record routinely available a week after it receives a PATI request. It contacts the requester and makes the necessary logistical arrangements for making the record available. The time period could be:

Time for decision to make record available	1 week (7 days)
Time for making record routinely available	3 days
<b>Total time before access to record</b>	<b>10 days</b>

49. The PATI Act accommodates this approach in section 16, by allowing for refusals of PATI requests on administrative grounds. After the public authority has made the record routinely available, the information will then be in the public domain or may be reasonably accessible to the public. Once this occurs, the public authority may turn to the PATI request and refuse the request on administrative grounds under section 16(1)(f).

### Note:

The public authority must first make the record routinely available to the requester and then make an administrative denial before the six week deadline expires for a decision on the PATI request.

50. Even if the entire record is made routinely available to the requester, the public authority should continue to process the actual PATI request for several reasons. For example, the requester may want to ask for review of other aspects of the public authority's actions, such as the search process or fees charged. A denial on administrative grounds safeguards the requester's right to seek this review.

### **Part of the record becomes routinely available while the PATI request is pending**

51. The public authority may decide that only some of the information in the record is exempt and that it is willing to make the record routinely available with the exempt information removed (a 'redacted record'). In most situations, the public authority will prefer to process this request *only* as a PATI request under Part 3 and will not choose to simultaneously make the redacted record routinely available under Part 2.
52. In some situations, however, the public authority, may wish to make a redacted record routinely available and avoid further delay in providing a requester access. For example, a 10-page record may only contain one exempt paragraph. The public authority may be ready and willing to black out that paragraph and provide access to the remainder of the 10-page record to the requester as a routinely available record consistent with Part 2 and Section 6.

**Note:**

When any redacted record is involved, the PATI request must continue to be processed to allow the requester an opportunity to challenge the redaction and seek review of the public authority's decisions.

This includes the right to an independent review by the Information Commissioner of the public authority's use of the exemption.

## **More information**

53. This Guidance has been developed based upon the PATI Act and current PATI Regulations, understood in the context of best practices and guidances from other Commonwealth countries with access to public information laws.
54. We do not have any decisions yet from the Information Commissioner or Bermuda Courts to drawn upon. So our Guidances may use examples of legal judgments from the UK or

other Commonwealth countries. These examples are for illustration only and are not binding on Bermuda's Courts or public authorities.

55. The Information Commissioner's Guidances and additional resources are available on our website, [www.ico.bm](http://www.ico.bm). If you do not have access to the internet, hardcopies of our Guidances, decisions and resources are available on request by contacting our office.
56. If you need any more information about this Guidance or have an inquiry about any other general aspect of the PATI Act, or public access to information, please contact us:

**ICO**  
INFORMATION  
COMMISSIONER'S  
OFFICE FOR BERMUDA

Valerie T. Scott Building  
60 Reid Street  
Hamilton, HM12  
Bermuda

(441) 294-9181 | [info@ico.bm](mailto:info@ico.bm) | [www.ico.bm](http://www.ico.bm)