

Information Commissioner's Reviews

A guide for public authorities

Table of Contents

Overview	3
Information Commissioner receives an application	4
Acknowledgment and validation	4
Acknowledgement and validation: your questions answered	5
Notice and early resolution (section 46).....	5
Notice to the public authority of valid application	5
Notice to the public authority of valid application: your questions answered	5
Early resolution (section 46)	6
Early resolution (section 46): your questions answered	6
Review and Investigation (section 47)	7
Notice of review and supplying the withheld records.....	7
Notice of review and supplying the withheld records: your questions answered	7
Applicant and concerned third party/original requester’s opportunity to comment	10
Making your formal submission.....	11
Making your formal submission: your questions answered.....	12
The ongoing investigation.....	14
The ongoing investigation: your questions answered	15
Resolution/settlement	15
The ICO’s resolution-based approach.....	15
The ICO’s resolution-based approach: your questions answered	16
The Information Commissioner’s decision	17
The decision	17
The decision: your questions answered	18
More information	19

Overview

1. The Information Commissioner's Office (ICO) has prepared this Guide to provide public authorities with information on what to expect during a review and investigation under Part 6 of the Public Access to Information (PATI) Act.
2. Any requester, or concerned third party who was given notice under sections 39 or 43, who is not happy with the way in which a public authority has handled the request for an internal review has a right to ask the Information Commissioner for an independent review (appeal).
3. Under section 45 of the PATI Act, the Information Commissioner has the legal power to review any decision made by the head of a public authority, or any failure by the head of the authority to make a decision within the required time.
4. When we receive a valid application for review, the Information Commissioner will initially assess the appropriateness of 'early resolution' under section 46. This is an informal process that may lead to resolving and settling all, or some, of the issues in the application.
5. If resolution is unsuccessful or inappropriate, the Information Commissioner will start the review process under section 47. As part of the review, we will conduct an investigation. We will provide you (the public authority), the applicant, and any concerned third party/original requester with a reasonable opportunity to comment on the matters raised by the application.
6. Note that the Information Commissioner is not an advocate for the applicant or a concerned third party/original requester. We are not a government department with Ministerial oversight. Instead, we are an independent public office that provides a neutral and legally enforceable decision on the application.
7. Our work is guided by the values of independence, integrity, and fairness. We follow our mandate to safeguard the rights and obligations created by the PATI Act when carrying out our work.
8. The purpose of this Guide is to provide you with detailed information on each stage of the review and investigation process. Throughout this Guide, we answer some common and anticipated questions useful to public authorities as you go through the review process. You should read each section fully, as valuable information is contained in the Q&As.

9. We hope this Guide will address many of the questions you may have about the Information Commissioner's reviews, and the related investigation, while also giving you vital information about your role in the process.

Information Commissioner receives an application

Acknowledgment and validation

10. When the Information Commissioner first receives an application, the ICO will go through several steps before sending you notice that a valid application has been filed.
11. First, the ICO will send the applicant an acknowledgment letter within five days of receiving the application.
12. Second, the ICO will complete our 'validation' process to ensure that the Information Commissioner has the legal authority to decide the application and that we understand which issues the applicant is challenging.
13. A 'valid' application to the Information Commissioner must be:
 - i. in writing (including by email);
 - ii. challenging the decision (or failure to decide in time) by the head of the authority; and
 - iii. filed within six weeks after the notice of decision (or failure to decide within time) by the head of the authority. The Information Commissioner may use her discretion to accept an application out of time if there is good reason.
14. During validation, we will also confirm in writing with the applicant that we understand correctly what the applicant wants the Information Commissioner to review.
15. The most common reason for an application to be 'invalid' is because the applicant asks for a review of the initial decision by the Information Officer before asking for an internal review by the head of the public authority. When this happens, the ICO will inform the applicant that the application is invalid because it came to us too early. We will explain how to request an internal review by the head of the public authority.
16. Once the application has been validated, the ICO will provide you with notice of the valid application.

Acknowledgement and validation: your questions answered

Will we always know that an application is filed?

17. No. The ICO will only send you notice, as explained below, after we determine that the application is valid. If an application is invalid, you may never know that the requester tried to file an application with the Information Commissioner too early or otherwise in error. The ICO will explain to the applicant the steps to take to ask for an internal review and how to submit a valid application to us, or to otherwise correct the application. This process does not include the public authority.

Notice and early resolution (section 46)

Notice to the public authority of valid application

18. As soon as the ICO has confirmed that an application is valid, we will notify you via letter of the application and the matters it raises.
19. We will also notify any 'concerned third party' who received notice under section 39 of the request or notice under section 43 of your internal review.
20. If a concerned third party filed the application with the Information Commissioner, we will notify the original requester of the application at this time.
21. The notice letter we send will list the issues that the applicant challenges and will also indicate whether the Information Commissioner has identified that early resolution is appropriate.

Notice to the public authority of valid application: your questions answered

How will the ICO give us notice of the valid application?

22. Our usual practice is to email the notice letter to the head of the authority to ensure you are aware of the application as soon as possible. We will follow the email with a hard copy of the letter addressed to the head of the authority.

How long will it take after an application is filed before we receive this notice?

23. We aim to validate the application within three weeks of receiving it and to send you notice immediately after the validation is complete. This is a target goal we have set for our office based upon good practice, but this is not a requirement under the PATI Act. Some applications may take longer to validate due to their complexity or other circumstances.

Early resolution (section 46)

24. As mentioned above, the Commissioner will initially assess whether early resolution and settlement under section 46 are appropriate for the application. In most applications, early resolution would be recommended for technical issues, like challenges to access fees.
25. In other circumstances, it may be clear from the outset that the issues raised in the application are covered by an earlier decision by the Information Commissioner. The Commissioner may encourage early resolution on this basis.
26. If the Information Commissioner finds that early resolution is appropriate, we will discuss this with you in more detail so that you can make an informed decision about how to participate.

Early resolution (section 46): your questions answered

Do we have to participate in early resolution?

27. No, but it is encouraged. The resolution process is voluntary. Any party can decide at any time to withdraw from early resolution and ask the Information Commissioner to move to the review stage, discussed below.

Is this the only time the Information Commissioner will consider resolution of the application?

28. No. Resolution also remains an option throughout a review and may be considered again at any point up until the Information Commissioner issues a decision. This is discussed further in 'Resolution/settlement', below.

Which approaches will the ICO use to achieve early resolution?

29. The ICO will use the full spectrum of alternative dispute resolution (ADR) tools available and will apply the appropriate approach required by the circumstances of the individual application. In most cases, the ICO will engage in negotiation or facilitation to help the parties achieve resolution of some or all of the issues in the application. The information and documents shared during the resolution process will not be part of the formal record subject to potential judicial review.
30. In the vast majority of cases, these ADR processes will not be conducted external to the ICO. Our staff will be involved in helping the parties achieve a resolution that is consistent with the rights, obligations, and requirements of the PATI Act.

Will the ICO use an external mediator to resolve applications in private?

31. As a general rule, the ICO would not normally use external mediators to conduct a confidential formal mediation external to the ICO's oversight, except in rare circumstances. While resolution tools are frequently used by the ICO to settle cases, it is important to ensure that a party does not use settlement to undermine or circumvent the obligations imposed by the law. If a public authority and applicant reach a private agreement, there is a risk that their agreement could undermine a public right. This is not an approach encouraged by the Information Commissioner.

Review and Investigation (section 47)

32. If the application cannot be resolved at the outset, or if the Commissioner decides early resolution is not appropriate, the application will move on to a review. This involves an investigation and leads to a decision by the Commissioner—unless resolution is reached later or the application is withdrawn or abandoned. It is during the review stage that the Information Commissioner will exercise her full powers under section 56 of the PATI Act.
33. The Information Commissioner has the authority to conduct a live hearing for the review. We anticipate, however, that in most, if not all cases, we will conduct a written review. This is standard practice in a number of comparable jurisdictions.

Notice of review and supplying the withheld records

34. We will notify you that the application has progressed to the review and investigation stage. We will also notify the applicant, and any concerned third party/original requester of the same.
35. In most applications, at this stage we will also ask you to send us a copy of all of the withheld records if the application relates to the use of an exemption or exception. The withheld records will help us to conduct an initial assessment of the case.

Notice of review and supplying the withheld records: your questions answered

What is the best way to send the records?

36. Currently, the ICO requires the withheld records in hard copy (paper) format or on a CD/flash drive only. We will **not accept withheld records by email**. For security and accountability, please send the withheld records by courier/hand delivery, or if you are sending by post, please use registered mail.

Should we send original documents?

37. We strongly suggest that you provide copies of records rather than original material. We will only accept original documents if there are very good reasons why they can't be copied. Any original records sent to us must be clearly marked as such. If you choose to send us original documents, you must be absolutely certain that you will not need to access them during the investigation. Again, for security and accountability reasons, please use courier/hand delivery or registered mail.

Can the records be viewed on-site?

38. In certain limited circumstances, ICO staff can arrange to visit, view, and assess the records on a public authority's premises. This may include instances where there is a large volume of records to consider, or where the evidence you wish to submit is unusual and vulnerable to damage if transported or copied (such as a historical document). Please bear in mind that even after doing this, we may still need to obtain copies of the documents from you.

What records should we send?

39. Where the ICO has requested, you must include **all** records you have withheld from the applicant.

40. Along with the records, you should include:

- i. a clear indication of the ICO application reference number (detailed at the top of the correspondence from the ICO); and
- ii. a completed Schedule of Documents form, clearly listing and numbering all documents submitted for consideration, and specifying which exemption(s) have been applied to which sections of information in the withheld record. The ICO will send you the Schedule of Documents form when we request the withheld records.

The information contained in the records is extremely sensitive, will it be secure at the ICO?

41. Yes. The ICO takes every precaution to safeguard all withheld records sent to us as part of an investigation. Everyone working for or with the Information Commissioner has been security vetted and is required to maintain secrecy under section 53 of the PATI Act. This means that the Information Commissioner, her staff, and any person engaged by the ICO are prohibited by law from disclosing any matters, information, or records they have obtained or learned about, except for the purposes of carrying out their functions under the PATI Act.

42. Any withheld records you provide during the course of an investigation will be held in our secure, safe storage facility onsite. Our security system includes security cameras, key card access, encrypted devices, and backup power supply. Only the ICO staff have access to our secure storage facility. No one external to the ICO, including our outside security service vendors and the building owner, may access our records storage facility without the approval of the Information Commissioner. Any such access (for example, for maintenance or during a fire alarm) would also be supervised by our staff. We will not copy or upload your withheld records to a networked computer.
43. In very limited circumstances, it may be possible to arrange for the ICO to collect sensitive records directly from your authority. Please notify the ICO as soon as possible if having us collect the records from your public authority is more appropriate.
44. Note that decisions published by the Information Commissioner do not disclose the content of the withheld records because this would usually be a breach of section 53 of the PATI Act.

Will you share the withheld records with the other parties?

45. No. Section 53 prohibits the Information Commissioner, her staff, and any person engaged by the ICO from disclosing the withheld information or records we obtain during the review with the other parties. Later in the review, we may outline to the applicant, and any concerned third party/original requester, any new arguments or exemptions you raise for the first time in your formal submission to the Information Commissioner. Again, though, when providing the other parties with the opportunity to comment on any new arguments, the ICO will not disclose any withheld records or information, consistent with our obligation under section 53. We make this clear to the other parties from the beginning.

How much time do we have to provide the records?

46. You will normally have two weeks to supply withheld records and this deadline will be clearly indicated in the notice letter you receive. The deadline may be extended in complex cases or cases involving extensive records. If you have any concerns about your authority's ability to meet the deadline, it is essential that you contact the ICO immediately.

What will happen if we don't provide the records?

47. The Information Commissioner's review is guided by our core values of independence, integrity, and fairness. We are also committed to communicating with you in a courteous, professional, and direct manner.

48. Should difficulties arise that delay or prevent our receipt of the withheld records or any other requested information, we will do our best to clarify any misunderstandings and obtain your cooperation. Under these circumstances, we strive to avoid any deterioration in the relationship that might lead to a public authority making a decision to refuse to cooperate with the Information Commissioner's review.
49. If ever a public authority **intentionally** refuses to comply with a request from the Information Commissioner issued during the course of a review, we will use the full force of the Information Commissioner's powers to promote and safeguard the right to access information.
50. Under section 56 of the PATI Act, the public authority is required by law to comply with the Information Commissioner's review. The Information Commissioner has the legal authority under section 56(1) to compel you to give evidence and produce documents required to conduct her review. Pointedly, section 56(2) unambiguously affords the Information Commissioner the authority to examine the withheld records.
51. Section 56(4) makes it a criminal offence for an individual to fail or refuse to comply with a requirement from the Information Commissioner during a review, or to hinder or obstruct the Information Commissioner's functions during a review. If required, we will submit a formal complaint to the Bermuda Police Service and/or the Director of Public Prosecutions that there has been an overt refusal to comply with our requirements under section 56 during the review.
52. A public authority's failures to comply with the Information Commissioner's reviews may also be detailed in the Commissioner's Annual Report. If a public authority repeatedly delays in providing the Commissioner with withheld records or other requested information during the course of reviews, the Commissioner may also decide to carry out an investigation and assessment of the public authority's practices and procedures under section 57(3) of the PATI Act.
53. Again, while the Information Commissioner has the authority to legally enforce public authorities' compliance with her requests, our approach first and foremost is to work with you in a courteous and professional manner to maintain a productive working relationship.

Applicant and concerned third party/original requester's opportunity to comment

54. Once an applicant has sent in the application and the validation process is done, the PATI Act does not require the applicant to do anything more. The burden is on you—the public authority—to explain and justify your decisions, actions, or inactions.

55. The PATI Act does, though, require the Information Commissioner to give the applicant and any concerned third party/original requester a reasonable opportunity to give us additional comments, information, or other evidence for the Information Commissioner's consideration.
56. It is at this point, that we give the other parties to the application an opportunity to submit their comments to the ICO. Remember that the ICO will not share the content of your withheld materials with the other parties.

Making your formal submission

57. Once the ICO is clear about the grounds of the application, and where relevant, about the withheld information, we will provide you with an opportunity to formally comment on the application. The ICO will request a submission to facilitate an accurate and objective assessment of the issues. Our request for your submission will most likely include a series of detailed questions for you to answer. This is done to assist us in understanding the basis of your decisions or actions. In most cases, your formal submission will consist of written answers to these questions, along with additional information or evidence, if any, you wish us to consider.
58. The extent of the questions asked will very much depend on what information the Information Commissioner already has before her. For example, fewer questions are likely to be asked when a public authority has already provided a detailed response to a request or given a well-reasoned decision at the internal review. If, however, your public authority's decisions were not very detailed or did not address all of the tests required for a particular exemption, we may ask more questions.
59. The ICO's questions will guide and frame your formal submission. We will always allow you the opportunity to provide relevant additional information or evidence with your formal submission if you wish to do so. The ICO's questions are intended to enhance, not limit, your submission.
60. It is important for public authorities to remember that it is your responsibility to satisfy the Information Commissioner that an exemption or exception applies, or that an administrative denial under section 16 is appropriate.
61. It will benefit you to give a clear, accurate, and comprehensive submission, which fully addresses all of the relevant issues. Failure to do so will likely lead to the Information Commissioner ordering access to records, or ordering an authority to respond to a request which it has administratively denied, on the basis that the public authority has failed to provide sufficient evidence to support its decision.

Making your formal submission: your questions answered

What issues will the investigation focus on?

62. The investigation focuses on the matter or matters which gave rise to the applicant's dissatisfaction. This will vary from application to application, but may particularly include the following issues related to the decision to deny access:

- i. dissatisfaction with the exemptions the public authority has applied;
- ii. disagreement with the public authority's consideration of the likelihood of harm or prejudice ('the harm test');
- iii. disagreement as to where the balance of the public interest lies when considering whether or not to disclose records ('the public interest test');
- iv. dissatisfaction with an administrative denial; or
- v. dissatisfaction with the refusal to disclose the existence of a record.

The investigation may also focus on the applicant's dissatisfaction with the refusal to amend a record in respect of personal information.

63. Other applicants may be unhappy that your authority did not fulfil its technical or procedural statutory obligations under the PATI Act. The ICO may therefore also investigate technical compliance with the PATI Act, such as:

- i. Were the statutory timeframes adhered to?
- ii. Did the internal review address any failure to advise an applicant of his or her right to ask for an internal review by the head of the authority?
- iii. Was the applicant advised of his or her right to ask for an independent review by the Information Commissioner?
- iv. Did the internal review address any failure to provide advice and assistance from the public authority required under sections 12 and 16?
- v. Did the public authority provide access to the records in a manner consistent with Section 17?
- vi. Was the decision to transfer, or not to transfer, a request in whole or in part to another public authority proper?
- vii. Was an extension of the time to decide the request or the internal review justified?
- viii. Were the fees charged for access to a record correct?

What should be the format of our answers and submission?

64. Your submission to the ICO's written questions may be in the form of a letter. In some cases, you may need to attach a sworn affidavit by the relevant individual to provide the factual basis to support an argument in your letter response. For example, if you are relying on exemption 22 to refuse access to a record because its disclosure would endanger the mental health of an individual, the ICO would anticipate receiving an affidavit or some other form of documentation from a mental health professional to support this conclusion.

What information should we send?

65. It may be helpful for you to include the following with your written submission:

- i. copies of documents (affidavits, reports, etc.) that support the points made in the submission;
- ii. background information about the records under consideration that will help us understand their context and sensitivity;
- iii. any legal arguments (but not privileged legal advice) you wish to make that may help your authority's arguments;
- iv. your view on whether it might be possible to disclose the record in a redacted version; and
- v. your view on whether the case may be suitable for informal resolution, e.g., whether you would now be willing to disclose some, or all, of the records to the applicant or whether there is some other action you could take which would satisfy the applicant.

How much time do we have to send our submission?

66. You will normally have three weeks to make your submission. This deadline will be clearly indicated in the letter requesting additional details.

What will happen if we don't provide a submission in time?

67. The deadline will only be extended in exceptional circumstances. If you have concerns about your authority's ability to meet the deadline, it is essential that you contact the ICO immediately. Do not leave it until the deadline for making your submission to contact us.

68. It is the aim of the ICO to resolve applications for review within four months, a target we have set for ourselves based upon good practice. This requires timely responses from all of

the parties. The Commissioner understands that at certain times other work pressures may fall on particular staff or members of public authorities (e.g., around the holidays or budget preparation time). But it is up to the public authority to ensure that it has arrangements in place which will allow it to cooperate with the Information Commissioner in a timely manner, even in the absence of key members of staff.

What will happen if we don't provide a submission?

69. The Information Commissioner has the same legal authority under section 56 to compel a public authority to make a submission, as she does to enforce the production of the withheld material, described above.
70. Note, however, that the Information Commissioner normally requires the *withheld records* to reach a decision. But the Information Commissioner may not require your *submission* to reach a decision. This is because the presumption under the PATI Act is that public records are accessible to the public.
71. It is the responsibility of the public authority to satisfy the Information Commissioner that your decisions under the PATI Act are correct and well-supported. You may choose not to provide a formal submission, but in addition to any consequences of the *intentional* failure to comply with the Information Commissioner's review described above, the Information Commissioner may still move to decision based upon the information and documents we hold.
72. Our priority is to communicate with you to maintain a courteous and professional working relationship. If, for example, you wish to rely only on your decisions alone and not make additional submissions in response to our request, simply let us know.

The ongoing investigation

73. Our task during the ongoing investigation is to ensure that the record on review is thorough and will allow the Information Commissioner to move to a decision.
74. We will review the withheld records, your submission, and any comment from the other parties. In some cases, the ICO may put additional questions to you to clarify your arguments or fill in a gap in your submission.
75. In other cases, additional comments may be sought from the other parties during the ongoing investigation. For example, if you rely on a new exemption in your submission, we will explain your new argument to the applicant and any concerned third party/original requester and invite their comments. We will not, however, share copies of your submission or disclose details of your arguments.

76. Once we are satisfied that we have all of the information and documentation needed for the review, the Information Commissioner will move to decision.

The ongoing investigation: your questions answered

Will you keep us updated during the investigation?

77. Yes. The ICO will keep all of the parties updated about any significant developments as the application progresses.

Will you visit us to interview our staff?

78. It is not normally necessary for the ICO to visit public authorities or to interview staff. Sometimes we find it helpful to arrange a meeting to clarify points in the investigation. Whether we do this depends, for example, on the complexity of the case and the volume or sensitivity of the records in question. ICO staff will be happy to discuss on-site visits if your public authority feels this is appropriate.

Should we discuss the applicant's case with them? Can we continue to deal with other matters as normal?

79. While we are dealing with an investigation it would be appropriate to refer the applicant to us if they approach you with queries about the investigation. However, there is nothing to prevent you discussing the case with the applicant, especially where this is likely to lead to the case being resolved informally.

80. New requests for records made by the applicant, even if they are connected to the application under investigation, must still be addressed in line with the PATI Act. You should remember the need to assist requesters and to respond completely, accurately, and in a timely manner.

Resolution/settlement

The ICO's resolution-based approach

81. The ICO will take a resolution-based approach throughout the review, not just in the beginning. Any appropriate opportunity for full or partial 'settlement' of the application will be encouraged and pursued, up until the point when the Information Commissioner issues a decision.

82. 'Full settlement' would normally mean that the applicant withdraws the application for review and the Information Commissioner would not issue any decision. A 'partial

settlement' means that some, but not all, of the issues are resolved and the Information Commissioner will decide the remaining unresolved issues. Any concerned third party/original requester would be included in the resolution and settlement process.

83. Sometimes you may offer a settlement that asks the applicant to make some sort of compromise. In such cases, the applicant's options may be: to accept the settlement outright; to ask us to discuss the options with them; to ask us to help negotiate a settlement on their behalf; and/or they may decide that they still want the Information Commissioner to reach a decision on their application.
84. If you settle a case directly with the applicant (and any concerned third party/original requester) without the ICO's involvement, please let us know as soon as possible.

The ICO's resolution-based approach: your questions answered

We are thinking of disclosing records to the applicant. Can we go ahead?

85. If the application does not involve a concerned third party, don't delay in sending the previously withheld information to the applicant. Remember, absent a concerned third party, it is the authority's decision to disclose at any time before the Information Commissioner issues a decision, so you do not need the Commissioner's approval.
86. When there are no concerned third parties involved, the Information Commissioner encourages public authorities to make records routinely available under Part 2 of the Act, even if a request for records is pending for those same records. In these cases, the PATI Act should not cause a delay in providing access to records if a public authority is prepared to provide it. This is equally true when granting access may serve to settle all or part of an application before the Information Commissioner.
87. If you consider that there is any scope for full or partial settlement of the case, please notify the ICO at the earliest opportunity as we may be able to help facilitate resolution.
88. Note that when you are handling records potentially subject to the exemptions in sections 23, 25 or 26, you may not disclose the records without upholding and safeguarding the third parties' rights during any resolution process.

Will a 'full settlement' always result in the application being withdrawn?

89. Usually, but potentially not always. In a 'full settlement', you would provide all of the requested records or fulfil the applicant's request in its entirety. Full settlement would normally mean that the applicant withdraws the application to the Information Commissioner and the Commissioner would then not be required to issue a decision.

However, occasionally the applicant may choose not to withdraw the application in these situations because the applicant still wants the Information Commissioner to make a decision. The Information Commissioner will issue a decision unless the applicant withdraws or abandons the application.

The Information Commissioner's decision

The decision

90. Once the investigation has been concluded, and if settlement has not been reached, the Information Commissioner will move to decision on the application.
91. The Information Commissioner will evaluate all of the parties' submissions and comments in light of the relevant law and policy. She will take into account the purpose and requirements of the PATI Act and Regulations, decisions from the ICO, and case law as it develops. She may also look to case law and practice from other jurisdictions with public access to information laws, along with any other relevant authorities and research.
92. The Information Commissioner's decision will likely address the following issues, depending on the circumstances of the application:
 - i. the exemptions that have been applied and whether they have been applied correctly;
 - ii. where a 'harm test' applies, what, if any, potential harm or prejudice there would be in disclosing the records;
 - iii. where a 'harm test' applies, whether the harm is substantial enough to prevent the disclosure of the records; or
 - iv. where the public interest test applies, the factors the public authority considered in gauging the balance of the public interest;
 - v. where relevant, the basis for upholding an administrative denial of a request.
93. The Information Commissioner's decision will affirm, vary, or reverse the decision of the public authority, and the Information Commissioner may make other orders, where appropriate and consistent with the PATI Act.

If the Information Commissioner finds that your authority has failed to comply with the PATI Act or Regulations, the decision will state this, and where relevant, confirm what steps your authority is required to take to comply. Should the Information Commissioner decide that

the authority has met its obligations under the PATI Act and Regulations, the decision will state this, too.

94. The Information Commissioner's decision will also advise the parties of their right to seek judicial review of any decision by the Information Commissioner. The PATI Act does not give the Information Commissioner the power to withdraw or amend her decision once it has been issued.

95. Your public authority, the applicant, and any concerned third party/original requester will receive a copy of the decision. The decision will also be made public and will be published on the ICO website.

The decision: your questions answered

How will we receive the Information Commissioner's decision?

96. Decisions will be sent by courier or hand delivery to the head of the public authority on the day the decision is issued. A copy will also normally be emailed to the head of the authority.

Will there be an opportunity to comment on the draft decision?

97. No. Although the ICO may verify facts with your public authority, it is not the Information Commissioner's practice to provide draft decisions to the parties for comment. The Information Commissioner, consistent with our obligation under section 47, will provide a reasonable opportunity for the parties to comment on the issues during the review process.

What happens if we don't comply with a decision?

98. If your public authority should fail to take steps specified in the Information Commissioner's decision within the timeframe stipulated, the Information Commissioner has the right to file her decision with the Registrar of the Supreme Court and to seek its enforcement in the same manner as an order of the Court.

Can we appeal against the Information Commissioner's decision?

99. Yes. Any person—including the public authority, the applicant, or a concerned third party/original requester—who is aggrieved by the Information Commissioner's decision may seek judicial review in the Supreme Court of the decision. The decision does not need to be filed in the Supreme Court for enforcement purposes in order for you to seek judicial review.

What happens to the withheld records we sent to the Commissioner?

100. Six months after the decision is issued, we will usually securely destroy all withheld records supplied by a public authority (with the exception of original documents). **You must notify the ICO within six months of the decision if you require any records to be returned to you.** If we do not receive such a request to return the withheld records, the records will normally be destroyed.
101. Withheld records will be retained beyond this time if an appeal for judicial review has been made, pending the outcome of that appeal. Six months after the appeal is concluded, we will usually securely destroy all withheld records in our possession, unless you request the records be returned to you.
102. On occasion, the Information Commissioner may also securely retain some records if retention is necessary for the discharge of the Information Commissioner's statutory functions: for example, to assist understanding of decisions or determinations. Withheld records are only retained in a tiny proportion of applications and, where it is retained, the public authority will be told in advance. Any record which is retained will be reviewed annually.

What happens if the Information Commissioner receives a PATI request for the records at issue in the application or for the public authority's submissions, during or following the investigation for the review?

103. It is possible for the ICO to receive a PATI request asking for records related to a review or investigation. The ICO's records created to carry out our functions fall within the exception in section 4 of the PATI Act. Therefore, the PATI Act's provisions do not apply to these records. Only the ICO's administrative records may be released upon a PATI request.
104. The ICO also has a duty under section 53 of the PATI Act to maintain confidentiality of matters, information, and records it obtains during the course of an investigation, except for the purposes of fulfilling our statutory functions.

More information

105. With your cooperation, our aim is to complete a review within four months of receiving the application, whenever possible. It might take longer if the application is complex, but we will always keep you informed about its progress.
106. You can ask us how the review is coming along at any time.

107. The Information Commissioner's decisions are subject to judicial review. Because of this, we use a formal process for investigating and making decisions. We will not have 'off the record' conversations with applicants, public authorities, or third parties about a review or any other part of our work.
108. We are happy to answer your questions about the review process in phone calls, emails, and, where necessary, meetings. We will log our communications in our confidential investigation records.
109. If you have any questions about the progress of the review, please don't hesitate to 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 | www.ico.bm