Reviews Policy and Handbook

Reviews conducted under Part 6 of the PATI Act

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Abbreviations

The table below sets out the abbreviations used in this document.

Abbreviation	Meaning
AIC	Assistant Information Commissioner
ICO	Information Commissioner's Office
OM	Office Manager
PATI	The Public Access to Information Act 2010
SL	Standard letter (listed in Appendix 4)

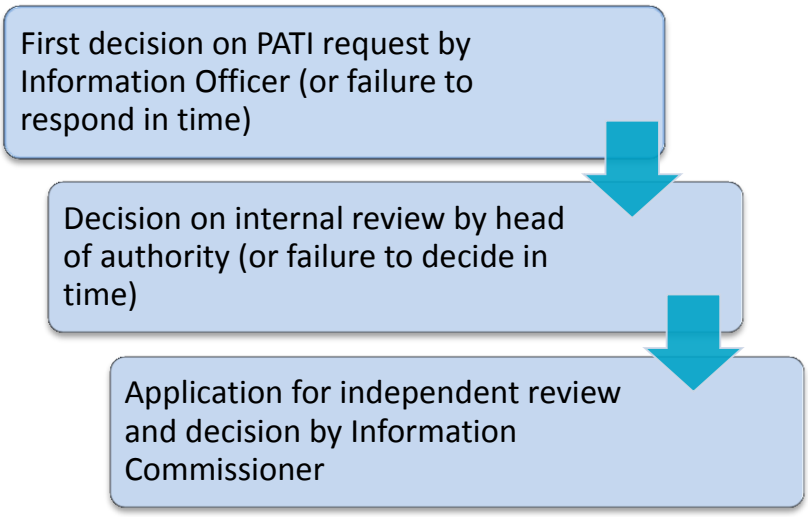
Introduction

1. The purpose of the Information Commissioner Office's (ICO) Review Policy and Handbook ("Handbook") is to provide guidance for the ICO staff in relation to the conduct of independent reviews by the Information Commissioner under Part 6 of the Public Access to Information Act 2010 ("PATI Act" or "Act"). It has been published for the benefit of the public and those involved in the use of the PATI Act. The Handbook is aimed at ensuring consistency and fairness in our approach to conducting reviews.

2. The procedures set out in this Handbook should, in the usual course of events, be adhered to insofar as practicable. It should be noted, however, that the PATI Act gives the Information Commissioner the discretion to adopt such procedures as are appropriate in all of the circumstances of a case and consistent with the PATI Act. Individual members of staff should seek guidance and direction from the Information Commissioner for any matters not covered by this Handbook, or when alternative procedures are required based upon the circumstances of a specific case. In all circumstances, the Information Commissioner and the ICO will aim to ensure that the approach adopted by the ICO is fair, and seen to be fair, to all the parties concerned.

3. One of the functions of the Information Commissioner is to conduct an independent review (appeal) from decisions made by the head of a public authority on an internal review, or the failure by the head of authority to decide the internal review in time.

4. Generally, the initial decision on a PATI request comes from the public authority's information officer. If dissatisfied (or if a response is not received in time), a requester can ask the head of the authority to conduct an internal review. Once the requester has received the internal review decision (or the head of the authority has failed to make a decision in time), the requester can ask the Information Commissioner for an independent review of the head of the authority's decision (or lack of a decision).



5. Section 45 of the PATI Act explains that:

> **Application for review**
>
> 45 (1)... [A] requester or a third party may apply in writing to the Commissioner for a review, as the case may be, of –
>
> (a) any decision made by the head of a public authority [on an application for an internal review], within six weeks after being notified of that decision; or
>
> (b) any failure by the head of a public authority to make a decision [on an application for an internal review], within six weeks after the date when the decision was required to be made.

6. The Information Commissioner has discretion to accept an application for review out of time, i.e., more than six weeks after notice of a decision by the head of a public authority or more than six weeks after the decision was due but was not issued.

7. Requesters can seek an independent review by the Information Commissioner if they are unhappy or disagree with any decision made by the head of the authority (or failure to make a decision in time) with respect to any request for access to records or request to amend a record of personal information, or the failure by a public authority to take any action required with respect to that request, including:

    i. A decision to grant or refuse access to a record

    ii. A decision about the manner in which access is provided

    iii. A decision to transfer a request to another public authority

    iv. A decision to extend the time for complying with a request

    v. A decision about the fees charged for access to a record

    vi. A decision to refuse a request to amend a record of personal information

    vii. A decision to refuse to disclose the existence of a record

    viii. A failure to do anything relating to a request within the deadline required by the PATI Act.

8. All staff, as well as technical and professional advisors, appointed or engaged under section 52 of the PATI Act must maintain confidentiality of all matters, information, or

documents that they learn about or obtain when performing their functions. Any communications or disclosure of these matters, information, or documents must be for the purpose of carrying out the ICO's functions or fulfilling a purpose under the Act. This Handbook provides guidance on when your functions and the purpose of the Act require you to communicate these matters, information, or documents. When any doubt arises, you must seek guidance from the Information Commissioner.

Obligation to maintain secrecy

53 (1) The Commissioner and every person appointed or engaged under section 52 shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions and shall not communicate any such matter to any person except for the purpose of carrying out their functions under this Act.

(2) Information or documents obtained by the Commissioner or any person appointed or engaged under section 52 in the exercise of their functions shall not be disclosed except for the purpose of this Act.

9. The Information Commissioner cannot take action on an individual PATI request unless the requester has first asked for a review by the head of the public authority. The only exception to this requirement is when the initial decision was made by the head of the authority and any application for review comes directly to the Information Commissioner.

Mandate and Values

10. Our fundamental approach is rooted in the Information Commissioner's mandate to promote public access to information, including by engaging in oversight of public authority's compliance with their obligations under the PATI Act and by hearing, investigating, and deciding applications for review of public authorities' decisions under the Act.

11. The Information Commissioner's reviews under Part 6 of the PATI Act are guided by three core values: *independence*, *integrity*, and *fairness*.

Independence

- We will work independently to oversee compliance with the PATI Act.
- We will take action when the PATI Act and our policies say we should.

- We will use the full force of the Information Commissioner's powers to promote and safeguard the right to access information.
- We will ensure that when carrying out her functions, the Information Commissioner is not subject to the direction or control of any person.

Integrity

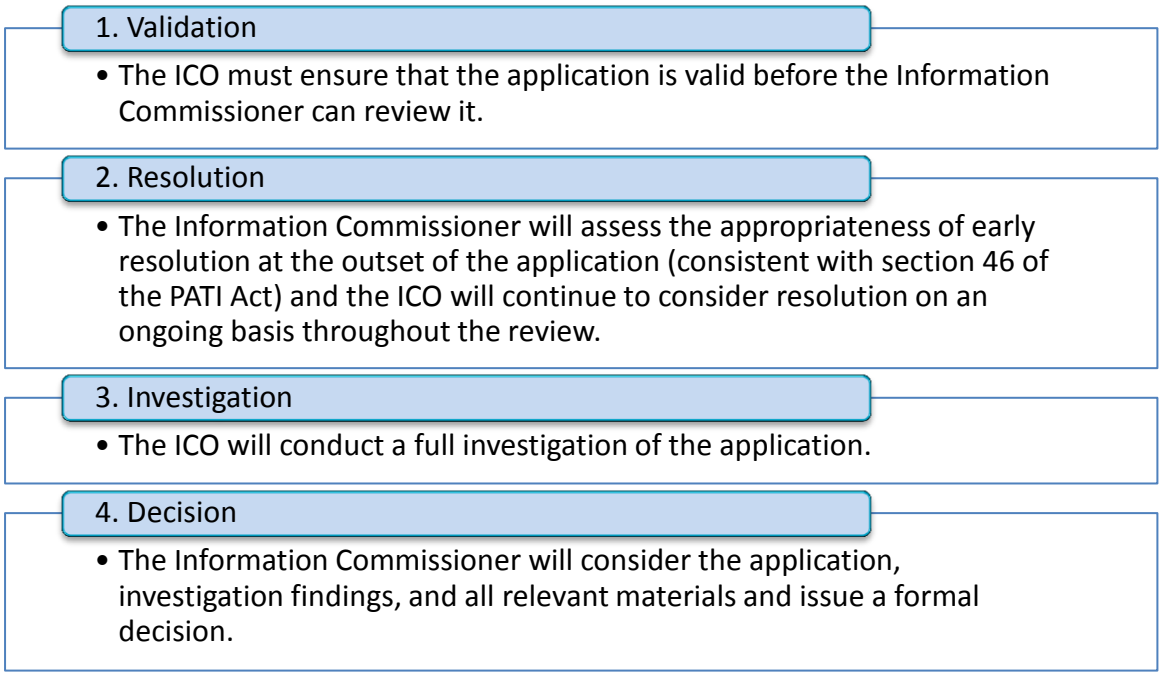
- We will make objective, evidence-based decisions based upon the reasoned application of the PATI Act's provisions and our policies to well-founded facts.
- We will fulfil the Information Commissioner's mandate according to the requirements of the PATI Act and our policies, without favour, partiality, or self-interest.

Fairness

- We will ensure a thorough and timely investigation.
- Our communications will be courteous, professional, and direct.
- We will apply the same law and policies to every public authority and individual.
- The Information Commissioner's decisions will explain her reasoning to the parties and, to the fullest extent possible consistent with her confidentiality obligations under the PATI Act, to the public.

The stages of the Information Commissioner's review

12. The review has four main stages during the consideration of the application:



Validation

13. The PATI Act sets out minimal requirements that an application must meet before the Information Commissioner can conduct an investigation and review. For example, the application for review must be in writing. If an application does not meet these requirements, then the Information Commissioner does not have power to investigate nor to enforce a decision.

14. If the ICO finds that an application is ineligible for a review, or 'invalid', we will explain to the applicant why it is invalid and offer guidance, where possible, to help the applicant make a new, valid application.

Resolution

15. The ICO takes a resolution-based approach to applications. This means that, when appropriate, the ICO will attempt throughout the review to resolve the application without the need for a formal decision.

16. At the outset of each application (consistent with her statutory responsibility under section 46 of the PATI Act), the Information Commissioner will evaluate the application for the possibility of early resolution, without the need for a formal investigation and decision.

17. If resolution is not appropriate or successful at this early stage, the ICO will move the application to an investigation. The ICO will continue to evaluate the possibility of resolving the application throughout the review. If resolution is not achieved during the investigation stage, the review will ultimately move to a decision, as noted below.

Investigation

18. If an application is not resolved at the outset, it will move to an investigation. In carrying out investigations, the Information Commissioner and her staff will continue to work with independence, integrity, and fairness. Our communications with both parties will be conducted in a clear and courteous manner, and we will continue, where appropriate, to facilitate or support the informal resolution of applications without recourse to a decision. Our investigations will ensure that our thorough research and findings provide support for the Information Commissioner's decisions.

Decision

19. Where resolution is not appropriate or not achieved, the Information Commissioner will issue a well-supported and argued decision, which clearly sets out the Information Commissioner's conclusions and the reasoned basis for coming to those conclusions.

Section 1: Receipt and Validation of applications

Receipt

20. All correspondence received by the Information Commissioner which expresses dissatisfaction with the manner in which a request for review has been handled by a public authority will be treated as a new application.

21. An application can be received in any written form which is capable of being used for subsequent reference, e.g., writing, email, fax, etc.

22. Note, if an applicant has a limited ability to read or write, or has a disability that impairs their ability to file an application for review in writing, the ICO will facilitate appropriate assistance for the applicant during the filing process.

23. The ICO has a single point of entry for all new applications received by email: info@ico.bm.

24. Any correspondence received directly by any member of staff that is likely to be a new application must be forwarded to the internal "Applications" inbox (applications@ico.bm) for handling by the OM.

25. The applications inbox is for internal purposes only. This email address should not be circulated externally for applications.

26. The AIC circulates a report of all new applications weekly to the Information Commissioner.

File Opening

27. The OM must create hard copy case files for all correspondence which appears to be a new application.

28. All hard copy correspondence relating to an application will be recorded in the post log book, opened, scanned, and transferred to the OM's scanning folder.

29. All new correspondence received by email which appears to be a new application received by any member of staff must be forwarded to the 'applications' inbox as a new application.

30. Where an email application has numerous attachments, the application and key validation documents should be saved by the OM in the case file independently from all other supporting documentation.

31. Supporting documentation should be saved in the case file as a separate entry under the appropriate tab, i.e., "Background".

32. In all cases, the OM should complete the following fields in the case summary sheet:

    i. The application number (DDMMYYYY, adding the suffix -01, -02, etc., if multiple applications are received on the same day)

    ii. Applicant

    iii. Public authority

    iv. Any special requirements highlighted by the application (e.g., language or writing barriers, technical assistance may be required, etc.)

33. The case summary sheet should be printed and placed in the hard copy case file.

Acknowledgement of applications

34. The OM should acknowledge new applications within five working days of receipt of application by sending SL01 and providing a copy of the ICO's *Guide for Applicants*.

Hard copy files

35. As noted above, the OM must open a new file for each new application.

36. All hard copy files have the following sub dividers:

    i. Case summary (contains the up-to-date version of the case summary sheet)

    ii. Validation

    iii. Public authority submissions (including the ICO's related correspondence)

    iv. Applicant submissions (including the ICO's related correspondence)

    v. Third party or original requester submissions (including the ICO's related correspondence), if required

    vi. Internal communications (e.g., triage notes, case meeting notes)

    vii. Research and background papers (e.g., copies of legislation and other background information gathered by the investigator)

    viii. WITHHELD INFORMATION

37. All documentation relevant to the validation of the case is to be placed in the hard copy file.

38. When the application has been received electronically, the relevant documents should be printed and placed in the hard copy file.

Assignment of validator

39. Once the hard copy file has been opened, a validator will be assigned to the case. The assigned validator may be the OM, an Investigation Officer, or the AIC. Assignment is based upon consideration of multiple factors, including but not limited to the skills and experience of the individual members of staff; the complexity, subject matter, and issues involved in the application; current workloads; and staff leave or absences.

40. The OM should then transfer the case to the assigned validator.

Collation of documents by validator

41. The validator will complete the synopsis and categorisation field in the case summary sheet.

42. Documentation should be collated by the validator and placed in the "Validation" section of the hard copy file in reverse chronological order with the following tags added, where relevant:

    i. Initial request

    ii. Initial response

    iii. Request for internal review

    iv. Internal review decision/outcome

    v. Application

43. Only key documents pertinent to the validation of the case should appear in the Validation section of the hard copy file. Duplicates/general acknowledgments/ administrative documentation and all other documentation NOT pertinent to the validation of the case should be removed from the Validation section of the hard copy file. Duplicates should be securely destroyed. General acknowledgments and administrative documentation should be placed into the "Internal communications" or "Background" sections of the file, as appropriate.

44. The case summary sheet should be updated.

45. Any application or correspondence which raises allegations of an offense under section 64 or 65 of the PATI Act should be passed **immediately** to the Information Commissioner.

Validation

46. During the validation process, the validator will determine whether or not the application meets the technical requirements in section 45 of the PATI Act, and if so, will then confirm the issues for review raised by the applicant.

47. All applications must be in writing and meet the requirements set out in section 45 of the Act:

    - Challenge a decision or a failure to decide by the head of a public authority
    - Be submitted within six weeks of notice of the head of the authority's decision or, in the case of a failure to decide, within six weeks of the deadline for the decision to be made.

48. As discussed below, the Information Commissioner may exercise discretion to accept an application out of time.

Initial assessment by validator: cases incapable of technical validation

Examples of applications clearly not capable of technical validation:
• No request made for internal review of Information Officer's decision • Entity is not a public authority under the PATI Act

49. The validator will assess whether the application is not capable of validation (see Appendix 1: Technical validation guidance and Appendix 2: Technical validation checklist), and tables above and below for guidance and examples). Where the validator has assessed the case as not capable of validation, or is unsure whether a case is capable of being validated, the validator will pass the case to the AIC for final assessment. The file must contain a case note from the validator setting out why the case is not considered capable of validation.

Initial assessment by validator: cases capable of technical validation

Examples of applications which may be capable of technical validation:
• Dates of request, etc., need to be checked • Request for internal review may have been made, but this is unclear • Application is untimely (see paragraph 53)

50. Where the validator considers that a case may be capable of validation, but needs additional documentation, the validator should seek further information from the applicant using SL02.

51. Following a reminder letter (SL03) sent by registered mail, if no response is received from the applicant, the case should be closed. See Section 12: Ongoing Investigation, for more details on abandoned applications.

52. Once the validator is satisfied that there is sufficient information to determine that the application is valid, the case should be passed to the AIC for final assessment. The file must contain a case note from the validator setting out why the case is considered valid. The case note must also raise any issues which the validator wishes to bring to the attention of the AIC.

Discretion to accept a late application for review

53. When an application is invalid only because it was made outside of the deadline, the validator should inform the applicant in writing using SL04a that the application is considered out of time and that the Commissioner will only accept a late application if there are reasonable grounds for doing so. The applicant will be invited to request that the Information Commissioner accept the application out of time and make a submission regarding any reasonable grounds for extending the deadline.

54. The validator will note on the case summary sheet that the SL04a has been sent.

55. The validator should then pass the case to the Information Commissioner for determination of whether any other parties should be notified and receive an opportunity to comment in the interest of natural justice or procedural fairness, or for similar reasons. The Information Commissioner should record her assessment on the case summary sheet.

56. If the Information Commissioner invites the public authority's comments on a late application (or those of a third party or the original requester), the Information Commissioner will instruct the validator to send SL05a. This notice explains that an application has been received out of time and invites the public authority (and any third party or original requester) to submit any comments within ten working days on whether or not it would be reasonable for the Information Commissioner to exercise her discretion to accept the late application.

57. If the public authority (and any third party or original requester) is invited to comment, the validator will send a notice (SL05b) informing the applicant.

58. If and when an applicant's and public authority's (and any third party or original requester's) comments are received, the validator should consider all submissions and

assess whether or not it would be reasonable to admit the application. The validator will make a recommendation to the Information Commissioner. The validator should document the parties' arguments and the validator's reasoning on the Late Application Assessment form and place it in the case file. The validator should pass the case file to the Information Commissioner.

59. Late applications should not be routinely accepted.

60. If, however, reasonable grounds exist to accept the application, this will be considered. Reasonable grounds might include, but are not limited to, *force majeure* situations (e.g., illness, storms, or hurricanes), absence from home, the public authority's failure to give the applicant details of the right of review by the Information Commissioner, or evidence of genuine confusion by the applicant concerning the review process.

61. It is impossible to provide a comprehensive set of grounds that may reasonably support the Information Commissioner's exercise of discretion. The Information Commissioner will decide each case on its merits.

62. The Information Commissioner shall make a decision within five working days whether or not to exercise her discretion to accept an application out of time, unless the comments raise exceptional circumstances.

63. The validator shall send the appropriate decision letter to the applicant (SL06a,b) and where appropriate, the public authority or other party (SL06c,d). All decision letters must be signed by the Information Commissioner.

AIC assessment

64. The AIC will assess each application which has been brought through the technical validation procedure. The AIC should note on the case summary sheet whether or not the application is technically valid. The AIC should discuss any questions about an application's validity with the Information Commissioner during case meetings. Any discussion with the Information Commissioner and the outcome should be recorded on the case summary sheet.

Invalid application

65. If the AIC is satisfied that the application is technically invalid, he or she will add a note to the case summary sheet confirming the basis on which the case is invalid.

66. The AIC will transfer the case back to the validator to notify the applicant and complete the processing of the case.

67. The validator must issue a notice (SL04a,b,c), as appropriate, to advise applicant that application is invalid. This letter must provide the applicant with clear reasons why their

application cannot be legally accepted and (where possible) advise applicant on the steps to take to make a valid request for an internal review by the head of the authority and/or a subsequent valid application to the Information Commissioner.

68. Section 44 of the PATI Act only permits cases to be referred directly to the Information Commissioner for the first review if the head of the authority made the initial decision on the request. The AIC should alert the Information Commissioner if he finds that an application referred under section 44 is invalid because the initial decision was not made by the head of the authority. The Information Commissioner must sign the notice of an invalid application (SL04d) in these cases.

Valid application

69. If the AIC is satisfied that the application is technically valid, he or she will confirm that the Information Commissioner has remit to consider and decide the application. This should be indicated on the case summary sheet.

70. The AIC will transfer the case back to the validator (including the failure to decide (FTD) cases), who must then complete the validation stage by confirmed the issues on review.

71. FTD applications will be handled according to the procedures in section 4 of this Handbook.

Valid application: confirmation of issues on review

72. For applications that the AIC has confirmed are technically valid, the validator must ensure that they are clear on the grounds of the application and that these grounds fall within the Information Commissioner's remit. These grounds may include any of the issues set out in section 41 of the PATI Act.

73. The validator must identify those aspects of the public authority's handling of the case with which the applicant is dissatisfied.

74. To achieve this, the validator should re-read through the application file to determine the issues the applicant seeks to have reviewed. When reading through the application file, the validator should include any possible issues that the applicant is raising either directly or indirectly. For example, if the applicant expresses concerns that not enough records were given, this should be recorded as a challenge to the adequacy of the search performed by the public authority. The validator will need to thoroughly read through the application and all supporting documents in the case file, including email correspondence, to identify all the issues raised.

75. Once identified, the validator must draft the SL07a setting out the issues on review for the applicant to confirm in writing.

76. If it appears to the validator that the applicant expects the investigation to cover issues which the ICO is unable to investigate, this must be made clear to the applicant when sending the SL07a.

77. The validator will create a case note in the case file setting out the issues on review and the preliminary observations on the following, as relevant. If no issues arise, the note from the validator need only state that there are no issues with the application:

    i. Whether the case is a substantive application or FTD

    ii. Media sensitive or otherwise sensitive cases, with an indication of the relevant category

    iii. Whether the case is suitable for resolution

    iv. Whether the case is one where we will not need to see the withheld information before coming to a decision

    v. Whether there are pending applications regarding the same record or overlapping issues

    vi. Whether the case raises other systemic compliance issues that should be addressed by a section 57 investigation

78. For each case, the validator will complete the "Categorisation**"** and "Synopsis**"** fields in the case summary sheet. (The synopsis field appears in the Information Commissioner's published list of decisions and is used for template letters at later stages so it is important that it is appropriately worded.) If the validator has any questions about the categorisation and synopsis for the application, this should be addressed during the case meetings.

79. The validator should then pass the case file to the AIC for approval of the SL07a. The validator should revise the SL07a, if required, until the AIC's approval is received.

80. In limited cases, it may not be necessary for the Information Commissioner to obtain a copy of the withheld records in order to come to a decision. For example, it is not necessary to examine the withheld records to assess the application of the exemption in section 38 for the non-disclosure of the existence of a record. It is the responsibility of the AIC during the technical validation process to identify these cases and advise the validator that there is no need to obtain the withheld records. The validator should note this on the case summary sheet.

81. With the exception of FTD applications, the validator will then advise the applicant that the application is valid using the approved SL07a. The SL07a identifies the issues the applicant is raising on review and the applicant must confirm in writing that the issues

are properly identified. The validator should communicate with the applicant until the list of issues is correct and confirmed in writing by the applicant.

82. Once the validation process is completed (including completion of the relevant sections of the case summary sheet), the validator should pass the application to the Information Commissioner for weighting and allocation.

Section 2: Weighting and Allocation

83. Once the validation process is completed and a valid application is pending, the validator will pass the case to the Information Commissioner for weighting and allocation.

84. The Information Commissioner will review the valid applications and determine whether the validator should continue the review process at this time, or whether the case requires allocation to an investigator now, and if so, which individual member of staff will be the investigator.

Weighting

85. All applications are *weighted* by the Information Commissioner before allocation. Weighting allows for an equitable distribution of workload and early identification of the anticipated nature of the application. The criteria considered for weighting includes, but is not limited to, the complexity of the application, the nature of the exemptions or exceptions involved, the applicability of clear precedent, the complexity of any public interest arguments, and political or media sensitivity around the issues involved in the request.

86. Each new case will be given a weighting of 1, 2 or 3:

Weighting	Examples of Criteria
1	• Failure to decide (FTD) applications • Straightforward applications, e.g., applications for records which are clearly subject to an absolute exemption; 'information not held' applications where it is apparent that the information sought by the applicant is not held by the authority • Few records are involved • Refusal is solely on administrative grounds under section 16
2	• Straightforward applications which involve a certain amount of judgment, but which do not involve new issues will usually be weighted 2 • It is possible that consideration will also be given as to whether the information is likely to be subject to one exemption or multiple exemptions • Applications involve numerous records

3	• Applications likely to involve complex arguments or legal points, or which involve complex public interest arguments, will be weighted 3 • Applications which are likely to receive media attention and those which are of a sensitive subject matter will also be weighted 3

87. Weighting is not to be taken as an indication of prioritisation, unless advised by the Information Commissioner.

88. The weighting of an application also provides an indication of the overall workload, which can be adjusted for individual members of staff during the course of the investigation.

Allocation

89. Application allocations to staff will take into account criteria including, but not limited to, overlapping or linked applications; the complexity, subject matter, and issues involved in the application; the appropriateness of early resolution under section 46 (described more fully in section 5 of the Handbook); the overall current workload and particular skills of each individual member of staff; and any potential conflicts of interest.

90. During allocation, the first and second approvers for the investigation findings will also be noted on the case summary sheet. The assignment of approvers will be based upon similar factors as allocation to investigators.

91. After determining the application's allocation, the Information Commissioner or AIC will complete the weighting and allocation fields in the case summary sheet. This will include adding any pertinent directions as to the investigation into the case summary sheet in the case file, along with the Information Commissioner's decision on the appropriateness of early resolution under section 46. This will also include any notes of discussions arising during application allocation meetings, e.g., overlapping cases/linked applications.

92. The case should then be returned to the validator or transferred to the investigator for the ongoing review process, including any consideration of resolution (early or otherwise) and investigation.

Section 46 notices

93. If the Information Commissioner has determined that a section 46 process is appropriate, the investigator should send notice to the applicant (SL11d), as well as notices to the public authority and any third party or original requester (SL11e, f), as appropriate, informing them of the valid application and the possibility of full or partial resolution under section 46.

Section 3: Cooperation between ICO staff and public authorities

94. Individual members of staff are reminded that, consistent with the ICO's mandate and values, we are to engage in courteous, professional, and direct communications with all public authorities. The conduct of individual members of staff should at all times encourage the full cooperation of public authorities.

95. The ICO review process depends upon the full and timely cooperation of all parties before the Information Commissioner. Participation in any early alternative dispute resolution process under section 46 of the PATI Act is voluntary, and these processes may be beneficial to both parties, as explained in Section 5 of this Handbook.

96. Once an ICO investigation is commenced under section 47 of the PATI Act, however, the public authority has a statutory obligation under section 56 of the Act to comply with the Information Commissioner's investigation, conducted by her staff. If a person fails or refuses to comply with an investigation under section 56, or hinders or obstructs an investigation, they may be guilty of a criminal offense.

97. As noted throughout this Handbook, individual members of staff should notify the Information Commissioner or AIC immediately in the unlikely event that a public authority becomes uncooperative during a review.

Section 4: Failure to decide

98. Where an applicant has complained about a public authority's failure to decide an internal review within the deadlines required in the Act, this will be treated as a failure to decide ("FTD") investigation.

99. All FTD investigations will go to decision; they are not suitable for resolution. The Information Commissioner's decision should acknowledge, however, if the public authority has rectified the failure to decide by issuing an internal review decision to the applicant during the course of the investigation.

Scope of FTD investigation

100. An FTD investigation will only consider the public authority's compliance with the deadlines under the PATI Act. All other procedural failings will be considered later as (or as a part of) a new substantive application for review subsequent to the decision that the Information Commissioner orders the head of the authority to issue, or that the head of the authority issues during the course of the FTD investigation.

101. FTD investigations will not consider whether the applicant should have received any or all of the records they asked for. If the Information Commissioner finds that the public authority failed to issue a decision on a request for an internal review, the Information Commissioner's decision will require the public authority to do so.

Receipt and validation of FTD applications

102. FTD applications are generally validated by, allocated to, and investigated by the assigned validator.

103. As noted in Section 1 of this Handbook, following the receipt and validation of a FTD application, the validator must send the SL07b letter to the applicant to advise them that their application will be treated as an FTD application.

104. This letter explains that the investigation will only consider compliance with deadlines, and, if it is confirmed that the public authority did not meet the deadlines, a decision will be issued by the Information Commissioner.

Notice to public authority and investigation

105. The validator will send a notice of valid FTD application letter (SL11b) to the public authority as soon as possible and, in any event, within one week. The public authority has ten working days to reply. The notice letter must be emailed to the authority and posted (by registered mail) or hand delivered.

106. The public authority may decide to immediately issue an internal review decision after receiving the notice letter. This is encouraged and will be acknowledged in the Information Commissioner's decision.

107. The applicant (and any third party or original requester, if relevant) must be given an opportunity to make representations following the procedures set out in section 7 of this Handbook.

108. If the validator is unsure of whether or not the head of the authority has failed to decide, the validator should raise any questions during the case meeting and record the discussion and any comments in the case file.

109. Upon receipt of all submissions, the validator must consider the submissions made and determine whether or not further submissions from any party are required before closing the investigation.

Investigation findings

110. When the validator has sufficient submissions to conclude the investigation, the validator will record the investigation findings using the template specific to FTD investigations. The validator should also prepare the decision covering letters (SL15a, b) before submitting the investigation findings for approval.

111. Once the Information Commissioner approves the findings and issues the decision, the validator must follow the procedure as set out section 16 of this Handbook for the issuance of a decision.

112. FTD cases should not usually be closed without a decision. In exceptional circumstances where the validator wishes to close a case during the investigation, approval should be sought from the Information Commissioner.

Closing the case file

113. All breaches of statutory deadlines and any other practices issues should be appropriately recorded in the "Non-compliance" section of the case summary sheet.

114. As with other applications, if no compliance is required (because the head of the authority already issued a decision during the investigation), the case should be passed to the OM once the Information Commissioner's decision is published on the website. If compliance is required, the case file must remain active and with the validator until compliance is satisfied.

115. Once compliance with the decision is met, the case should be passed to the OM for closure, storage, and scheduled destruction. Hard copy case files should be destroyed

seven years after the decision is issued, unless we have received a substantive application within that time.

116. If a new substantive application is received, the OM must transfer documents from the FTD case file into the new substantive application case file.

Section 5: Resolution

117. The ICO takes a resolution-based approach throughout the review. Resolution opportunities can be considered at any point, but the PATI Act requires the Information Commissioner to consider resolution prior to moving to an investigation for the review under sections 47(1) and 56. It is the policy of the ICO to also consider resolution throughout the review process until a decision is issued.

118. We have available the full scope of alternative dispute resolution processes, but will rely primarily on informal facilitated resolution by ICO staff.

119. Alternative dispute resolution processes are mechanisms by which parties agree to a course of action, which may result in an applicant withdrawing the application for decision, or narrowing the issues raised in the application.

120. 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.

121. 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 third party or original requester may need to be included in the resolution and settlement process, depending on the nature of the issues and proposed resolution.

122. Resolving cases through full or partial settlement has a number of advantages. From an applicant's perspective, this process can result in speedier resolution of the application and potentially faster access to records. From the public authority's perspective, granting access to the records in appropriate circumstances can avoid the need for further time spent on preparing written submissions. This may occur, for example, when the public authority's consideration of the ICO's request for formal submissions reveals that the authority had misdirected itself in its earlier decision.

123. Resolution may be initiated by a party or the ICO, subject to the considerations set out below.

124. Section 46 authorises the Information Commissioner to attempt to resolve a case prior to investigation using the full range of alternative dispute resolution processes. Under section 46 and then throughout the investigation, ICO staff may engage in informal facilitated resolution, where appropriate, to assist the parties in resolving some or all of the issues in the application.

125. Informal facilitated resolution could, for example, include:

- Partial disclosure of information
- Identification of an alternative/more appropriate route to receive the information, e.g., through a different statutory regime
- Additional explanation provided by the public authority, e.g., explaining why certain information is not held, or a clarification of misunderstandings
- Submission of a revised request for information by the applicant

126. The investigator must consult with the Information Commissioner before resolution/settlement is proposed, and the Information Commissioner's response retained in the case file.

127. In all cases where resolution is attempted, it is important that the applicant's right to a decision by the Information Commissioner is safeguarded. The investigator should make it clear that resolution is not an exercise designed to reduce the rights of applicants in any manner. Rather, it is a process aimed at narrowing the differences between the parties.

ICO proposes resolution/settlement

128. At any point during the investigation, the investigator may be able to identify opportunities to resolve all or part of an application.

129. In all cases, the investigator must consider whether or not there is an overriding public interest in issuing a decision, for example, to set a precedent or make it public knowledge that the Information Commissioner has made a finding for or against a public authority.

Public authority proposes resolution/settlement

130. If the public authority suggests a settlement to the investigator, the investigator should assess whether or not it is in the applicant's and the public interest to propose it to the applicant, seeking guidance from the Information Commissioner and AIC as appropriate.

131. If the public authority suggests a settlement directly to the applicant, the investigator should engage in the same assessment process and advise the applicant accordingly.

Applicant proposes resolution/settlement

132. If the applicant informs the investigator by letter or email, or during a telephone conversation, that they wish to withdraw their application because of a proposed settlement, the investigator should review the settlement to confirm that it is in the

applicant's interest to withdraw, seeking guidance from the Information Commissioner and AIC as appropriate.

133. If it is not in the applicant's interest, the investigator should contact the applicant to advise them of this, and to confirm whether they still wish to withdraw their application.

134. If the applicant raises this unexpectedly during a telephone conversation, the investigator should offer to review the settlement and arrange further contact as appropriate.

Confirming satisfaction of settlement

135. If settlement is agreed and the public authority is willing to disclose further records or provide further explanation to the applicant to achieve resolution, the investigator should agree to a date (no later than three weeks from the agreed settlement) by which the public authority should have delivered the terms of the settlement.

136. The investigator should ensure that they have written confirmation that the terms of the settlement have been met before accepting formal withdrawal from the applicant. The investigator should send SL09, which seeks to confirm in writing that the applicant is satisfied that the terms of the settlement have been met, fully understands the rights afforded under the PATI Act, and is making an informed decision to withdraw the application. The investigator must receive a written response from the applicant before the Information Commissioner accepts a withdrawal of the application.

137. If the applicant confirms in writing that they are not satisfied that the public authority has meet the terms of the settlement (or if the resolution is only partially successful), the investigator should progress the application through the investigation and the Information Commissioner will ultimately move to decision. The investigator should inform all parties of this progression, using SL12a, b, or c, as appropriate. Where appropriate, resolution will continue to be considered on an ongoing basis as the investigation proceeds.

Withdrawn applications due to resolution and settlement

138. Although the Information Commissioner cannot choose to stop an ongoing investigation, an applicant may choose to withdraw an application if it has been resolved and fully settled. In most cases, the Information Commissioner will accept the withdrawal unless the circumstances of the case raise concerns that the withdrawal and/or settlement terms are intended to reduce the rights of individuals under the PATI Act. Note that a public authority cannot choose to withdraw from the application for review.

139. If an applicant confirms in writing that they no longer wish to pursue their application and that the terms of the settlement have been met, the investigator should send SL10a (by registered mail or hand delivery) to the applicant in response to confirm that no decision will be made and the case file will be closed. This letter must be approved and signed by the Information Commissioner.

140. The investigator should also send a notice letter of the withdrawal, SL10b, to the public authority, ensuring that any learning points or practice issues are raised. The letter to the public authority should be signed by the Information Commissioner. The investigator should also send notice letters of the withdrawal, SL10c, to any other parties to the review, as appropriate.

141. The investigator must alert the OM that the case has been closed during the course of the investigation.

142. The OM will check that the hard copy file is destroyed seven years after the application is withdrawn.

Section 6: Notice of Valid Application and seeking the withheld records

143. If the Information Commissioner determines that the process under section 46 is inappropriate, the validator will issue the SL11a and seek the withheld records.

144. Note that if a section 46 process has been unsuccessful or only partially successful, the investigator should proceed to send SL12b to seek the withheld records and progress the application to the investigation. All other parties should also be notified that the case is proceeding to investigation, using SL12a or c, as appropriate.

145. The validator should issue the SL11a to the public authority. The issues on review must be provided to the public authority in this letter. When there is likely to be more than one record, a copy of our schedule of records must also be sent with the letter. Before sending the schedule, the validator must complete the following information in the schedule: name of public authority, head of public authority, the Information Officer, our reference number, and the public authority's reference number, if any.

146. Note that if the investigator is seeking the withheld records using SL12b after an unsuccessful or only partially successful section 46 process, the letter will only clarify changes, if any, to the issues on review that were previously provided to the public authority. Except for this difference, the investigator should follow the same process described for a validator for seeking the withheld records.

147. The SL11a (or SL12b) and the schedule ask public authorities to:

i. Provide copies of the records rather than originals (unless there are exceptional circumstances)

ii. Remove all duplicates and avoid providing large chain emails where the same information appears a number of times

iii. Ensure that all records or parts of records provided are clearly labelled to correspond with the schedule

iv. Clearly mark-up records showing what has been disclosed and what remains withheld, if relevant

v. Ensure that all attachments to emails/records, which fall within the scope of the request, are provided

vi. Complete the schedule of records provided. The schedule requires the public authority to confirm what records or parts of records are being withheld under which exemption(s).

148. If the information is not provided within ten working days, the validator will call the public authority to remind them that we are waiting on the withheld information and, where necessary (a delay of more than one week), discuss the case with the AIC to determine whether or not to recommend that the Information Commissioner escalate the enforcement measures under section 56 of the Act.

149. When withheld records have been received, the case will be transferred to the OM.

150. The OM will ensure that the withheld records are in the appropriate form. The OM will create hard copies of the records for the case file, if needed.

151. The OM will check the schedule of records against what has been received from the public authority. If the schedule does not list everything provided or if there are records that appear to be missing from the records supplied, the OM will contact the public authority.

152. When the withheld records have been received from the public authority and checked against the schedule, the OM will prepare the hard copy file and pass the case to the Information Commissioner for weighting and allocation to an investigator at this time if one has not yet been assigned.

153. Where the OM believes we have been provided with original records, the OM must consult with the Information Commissioner and log the receipt of original records.

154. A register for this purpose will be maintained in the form of a log book. The receipt of original evidence must be noted in the case file. The original records log book and all original records must be stored in the safe in the secure room and clearly marked "ORIGINAL".

Section 7: Applicant and third party's opportunity to make representations

155. Once a section 47 investigation has begun and weighting and allocation completed, the investigator must give the applicant and any third party or original requester a reasonable opportunity to make representations, i.e., provide their comments on the application, as required by section 47(4) of the PATI Act. This process should coincide with seeking the withheld records from the public authority.

156. The applicant and third party or original requester have the right to comment on any of the issues raised in the application.

157. Note that the applicant does not have any burden to prove their right to receive the public records at issue. An applicant is not obligated to provide any representations or submissions to receive the records. Even if the applicant submits nothing further, the burden is still on the public authority to demonstrate it has satisfied its legal obligations under the PATI Act. For example, if the public authority does not convince the Information Commissioner of the correctness of its decision to deny access to a record, the public record must be disclosed.

158. The process outlined in this section is the applicant's and any third party or original requester's opportunity to provide additional information, arguments, or context if they wish to do so.

Applicant's opportunity to make representations

159. The investigator should send the SL13a inviting the applicant to make submissions on any of the issues raised by the application. The investigator should prepare the SL13a to reflect the specific issues raised in the application, as appropriate.

160. If the applicant refers in their comments to evidence that would lend weight to the application and that has not been attached, this should be sought from the applicant prior to seeking formal submissions from the public authority.

161. The applicant should be given ten working days to submit any representations or additional information they wish the Information Commissioner to consider. Discretion is afforded to the investigator to extend this period to up to fifteen working days if the case is considered complex and/or voluminous. Extensions of time for other reasons (vacation, illness, etc.) must be approved by the AIC.

Third party or original requester's opportunity to make representations

162. If the public authority gave a third party notice of the request pursuant to section 39 of the PATI Act, or if the applicant is the third party, the investigator should give notice

of the valid application to the third party or original requester and invite them to make representations on those portions of the application related to them using SL13b. The investigator should prepare the SL13b to reflect the specific issues raised in the application, as appropriate.

163. The third party or original requester should be given ten working days to submit any representations or additional information they wish the Information Commissioner to consider.

Section 8: Assessment of the withheld records

164. Prior to seeking formal submissions from the public authority, the investigator must undertake a preliminary review of the withheld records and the schedule of documents.

What to do if there are ambiguities:
If there are ambiguities or questions regarding the schedule of documents or withheld records, these must be resolved with the public authority prior to seeking formal submissions.

165. The investigator must be satisfied that records withheld were not—at the time of the request or subsequently—in the public domain. This should be confirmed through internet searches, a review of the public authority's website, and so on. If the records are already in the public domain, the investigator should notify the parties to determine if this will resolve some or all of the issues on review and proceed accordingly.

166. If we know the record is subject to an absolute exemption which the public authority has not cited, advice should be sought from the Information Commissioner on raising this with the public authority. There may be a legal prohibition on disclosure even in cases where the public authority has not recognised this. In some cases, it could be contrary to law for information to be disclosed but the individuals in the public authority dealing with the request are unaware that this is the case.

167. Equally, when it is clear that an exemption does not apply, e.g., erroneously cited by the public authority or where the exemption/exception has been clearly misunderstood by the public authority, the investigator should contact the public authority prior to seeking submissions to clarify.

168. The investigator should consider whether or not they agree with the public authority's interpretation of the PATI request. If the investigator takes the view that the public authority has interpreted it too narrowly, too broadly, or simply unreasonably, the public authority should be advised of this.

169. The investigator should also check previous ICO cases and active investigations for overlapping, connected, or substantially similar cases.

170. Prior to seeking formal submissions, the investigator must also ensure that they understand the context of the application. The investigator should conduct proportionate research to understand the circumstances in which the request was made.

171. Where additional clarification is required prior to seeking formal submissions, to progress the application as quickly as possible, investigators are encouraged to make telephone contact wherever possible, ensuring that an adequate record of the conversation is kept in the case file. Investigators should confirm, in writing, the outcome/action points arising from any conversation with the public authority or applicant.

172. When the investigator is experiencing difficulties establishing what records are being withheld by the public authority or which provisions the public authority is relying upon because of the public authority's refusal to cooperate with the investigation, the investigator should raise this in the case meeting. In the case meeting, consideration will be made about whether the Information Commissioner should escalate the enforcement measures under section 56 of the Act.

Section 9: Seeking the public authority's formal submissions

Formal submissions from the public authority

173. Once the investigator is clear about the grounds of the application and, where relevant, about the withheld information and any representations from additional parties, the investigator must draft and issue the formal letter seeking submissions from the public authority (SL14).

174. Before seeking the formal submission as part of the investigation, the investigator should be clear about which exemptions, exceptions, and/or administrative grounds the public authority has cited and be confident that the public authority has (1) supplied all of the withheld records or part of records and (2) that the records fall within the scope of the request.

175. The purpose of the SL14 is to provide the public authority with an opportunity to make representations on the application, as required by section 47(4) of the PATI Act. It is the public authority's responsibility and choice to take advantage of this opportunity. The Information Commissioner will not usually compel the public authority to provide a response or make representations on the application.

176. The public authority should be advised that the Information Commissioner will expect to be able to reach a decision on the basis of the authority's response, and there may not be a further opportunity to make representations.

177. The SL14 should invite representations from the public authority on the issues raised in the application, and request any specific information or comments the investigator requires to produce the investigation findings for the Information Commissioner.

178. Wherever possible the SL14 should also provide the public authority with an opportunity to identify potential ways to resolve the application.

179. Any questions posed in the SL14 must be **clear** and **relevant**. Wherever possible, open questions should be used, so that answers are not suggested to the public authority.

180. The investigator should refer to the ICO's *Key Questions on Reviews* ("*Key Questions*") when preparing the SL14. This document is updated and maintained by the AIC to ensure that questions posed in relation to exemptions/exceptions are legally accurate and address all the relevant tests. This document is only a guide and therefore the questions **must** be altered and supplemented to suit the specific circumstances of each review.

181. Before posing questions in the SL14 the investigator should consider whether or not these tests have been met in the public authority's internal review decision. On occasion, it may be sufficient to simply issue a letter providing the public authority with an opportunity to provide additional representations and inviting it to rely on the reasoning provided to the applicant in its internal review decision.

182. Where the ICO is investigating a number of connected cases involving the same public authority and submissions have already been provided in relation to a connected case, the public authority should be provided with the opportunity to rely on submissions already made. Care must be taken, however, to ensure that in all cases the public authority is provided an opportunity to make submissions specific to each review.

183. Unless obvious from the nature of the records requested, the searches undertaken to locate records and the records identified, the public authority must also be asked to supply details and descriptions of the searches undertaken to locate the records falling within the scope of the request and to explain why it considers its actions to be sufficient.

184. When a public authority has cited multiple exemptions/exceptions in relation to the same record or part of a record, it may not always be necessary to fully consider each exemption/exception when preparing the investigation findings. If it is clear that an absolute exemption should be upheld, there is normally no need to consider whether any other exemptions should also be upheld. The investigator should take this into account when drafting the SL14, and seek guidance from the Information Commissioner when appropriate.

185. All questions in the SL14 must be numbered to ensure that a response is made to each point.

186. When referring to the records or parts of records, the investigator must use the numbering/references of the records or parts of records used by the public authority in the schedule of withheld records to identify the records. These references must remain consistent throughout the investigation.

187. Once the investigator has completed the SL14, the SL14 should be circulated and discussed during the next case meeting for peer review to ensure that no revisions are needed before issuing it to the public authority. The investigator should incorporate any recommended revisions prior to dispatch to the public authority.

Drafting the SL14:

Special care should be taken with the SL14. The investigator must ensure that it is well drafted to allow the public authority to provide all of the information and submissions which are required to finalise the investigation and to allow the Information Commissioner to come to a determination without the need to seek additional submissions from the public authority.

A poorly drafted SL14 will result in a poor response, may be unduly burdensome on the public authority, and may prolong the investigation. The peer review process during case meeting offers support for ensuring the quality of the SL14.

188. The SL14 must be issued by hard copy hand delivery to the public authority and recorded in the post log book, with a copy sent by email on the same day. The investigator should also call the public authority on the day of issuing the SL14 to alert the public authority to its requirements. An adequate record of the conservation should be recorded in the case file.

189. The public authority should be provided with ten working days to provide formal submissions. Discretion is afforded to the investigator to extend this period to fifteen working days where the case is considered complex and/or voluminous.

190. If the public authority fails to respond within the timescale set out in the SL14, the investigator should, within two working days, contact the public authority noting that no submissions have been received. The investigator should advise the public authority that unless submissions are made within one week, the investigation findings will be made and the Information Commissioner will move to decision—unless the Information Commissioner has agreed with the public authority to a different time frame.

191. In the unlikely event that the public authority decides not to provide submissions at all, the investigator should alert the Information Commissioner to discuss how to proceed. It will often not be necessary to engage in further enforcement under section 56 to conclude the investigation and for the Information Commissioner to reach a decision. This is because the presumption under the PATI Act is that public records will be disclosed unless a public authority justifies its withholding.

192. In some circumstances, however, the Information Commissioner will require submissions from the public authority. These could include cases, for example, where the issue in the review is whether the public authority holds the requested records or

whether it conducted an adequate search. The investigator should seek guidance from the Information Commissioner on how to proceed.

Section 10: Assessing the submissions

193. Once submissions have been received from the public authority, the investigator must ensure that these are added to the hard copy case file.

194. Any additional withheld information supplied at this stage must be separated from the public authority's submissions, and added under the "WITHHELD RECORDS" tab.

195. The investigator, as soon as possible after the receipt of submissions, must:

i. check that the public authority has addressed all of the questions raised in the SL14;

ii. identify any new matters or exemptions/exceptions that were not raised in the public authority's correspondence with the applicant;

iii. identify any areas where further evidence or information is required in order to answer the questions raised by the application; and

iv. check that the submissions are relevant and specific to the records withheld in each case.

196. If new material issues are raised for the first time in the public authority's submissions, the investigator should assess them following the procedures in section 10 of this Handbook.

197. When assessing the submissions, the investigator must consider whether or not the public authority has provided enough information to show that it has satisfied the tests relevant to each exemption or exception (or relevant to the appropriate legal obligation under the Act). The investigator can refer, among other things, to the following resources to help them assess the submissions:

i. ICO's Briefings and Guidances on any of the exemptions or exceptions cited, or key provisions involved;

ii. precedent from previous ICO decisions;

iii. legal advice obtained by the ICO;

iv. legal information resources in the ICO library and on Justis (staff without access to Justis can ask colleagues with access to carry out research on their behalf);

v. research in media and other external resources, particularly on potential harm and the public interest; and

vi. Court decisions (binding and persuasive).

198. The investigator should carry out a proportionate level of research into the broader issues relating to the application, to understand the context in which it sits and to allow informed critical assessment of the submissions provided by the public authority.

199. As noted above, when a public authority has cited multiple exemptions/exceptions in relation to the same record or part of a record, it may not always be necessary for the Information Commissioner to fully consider each exemption/exception in reaching a decision. If it is clear that an absolute exemption should be upheld, there is normally no need to consider whether or not any other exemptions cited should be upheld. Similarly, there may be no need to consider all the exemptions/exceptions cited by the public authority if it becomes clear that the information should be entirely withheld under a qualified exemption and that the public interest lies in maintaining the exemption.

Public interest

200. If relevant, the investigator must consider whether or not the public authority has provided enough information to consider both sides of the public interest test.

201. The investigator must be satisfied that the public authority has balanced the public interest in favour of disclosure against the public interest against disclosure.

202. The investigator should refer to the *Key Questions* and the ICO Guidance: *The Public interest test*.

When the public authority changes its position during the investigation

203. If the public authority applies additional exemptions/exceptions, the investigator must inform the applicant and other relevant parties, invite them to comment and continue the investigation as normal. The public authority must provide submissions to justify its reliance on the new exemptions.

204. If the public authority discovers a relevant record after claiming that it did not hold any relevant record, then the investigator should notify the Information Commissioner to determine how best to proceed under the circumstances of the case.

205. Where the basis on which the record was withheld has changed (e.g., from an administrative denial for a vexatious request to relying on exemptions) and further investigation is required to reach investigation findings, the investigator should notify the Information Commissioner. Based upon the circumstances of the case, the Information Commissioner may instruct the investigator to seek additional submissions from the public authority to justify its use of the exemption, or may consider issuing a decision that requires the public authority to substitute a new internal review decision under section 43(2) that justifies the use of the exemptions.

206. However, there may be cases where the investigator already has enough information to reach investigation findings and recommendations on the public authority's revised position, without requiring further investigation. This must include any representations received from the other parties to the review. In these cases, the investigator can complete the investigation and prepare investigation findings that consider the public authority's position in full.

207. Further guidance on the ongoing investigation process is set out in Section 12 of this Handbook.

Section 11: Triage

208. Once sufficient submissions have been received from the public authority and considered by the investigator, the investigator must prepare a short note (triage) for the Information Commissioner. These should only be prepared when the investigator is satisfied that there are no obvious gaps in the public authority's submissions.

209. The purpose of triage is to alert the Information Commissioner to any significant issues with the application, to confirm that the investigation is heading in the right direction, and to ensure that appropriate advice and guidance are provided sooner rather than later. Triage will also allow the Information Commissioner to identify investigations which may require her input at an earlier stage.

210. Triage should be submitted to the Information Commissioner within one week of receiving submissions. This period can be extended for complex cases with the approval of the Information Commissioner.

211. Triage is **mandatory** for all investigations, although the level of detail required will be proportion to the issues under investigation. Investigators must use the triage template form.

212. Triage is not designed to replace regular case updates which consider the ICO's caseload as a whole.

213. The investigator should follow the guidance below when drafting triage notes:

i. Only reproduce **full details** of requests, initial responses, requests for internal review, and internal review outcomes where it is necessary for the Information Commissioner's understanding of the case.

ii. The investigator should provide a **brief** background or context to the request, including key dates (e.g., date of award of tender), website links, and details of any overlapping, linked, or similar cases.

iii. The investigator must **summarise** or list the key points of the submissions by both parties. This will illustrate to the Information Commissioner the investigator's understanding of the case (wholesale reproductions of submissions should be avoided).

iv. Where reference is made to a specific document, please ensure either a copy or hyperlink is provided to the Information Commissioner or that the document is easily identifiable from the case file.

v. Summaries should highlight the key areas for consideration and indicate areas where there are potential gaps in the arguments supplied.

vi. Triage should be a maximum of 2 to 3 pages.

vii. The investigator is expected, wherever possible, to provide his or her view on the proposed outcome and/or next steps.

viii. Each triage must highlight any potential scope for resolution.

ix. Advice sought from the Information Commissioner should be clearly set out in numbered questions.

214. The Information Commissioner must be provided with the case file and the Information Commissioner's advice will be added to the triage note.

215. The Information Commissioner will provide her comments on the triage note within one week, unless the case is complicated, in which case the timeframe will be agreed between the Information Commissioner and the investigator.

Content of case files

216. The investigator must ensure that the case file contains copies of all correspondence and notes of all phone calls or meetings relating to the case, and that the case file is always kept up-to-date. Emails should be added to the case file on the day on which the email is received or sent.

217. Progress with the investigation will also be recorded in the case file by copying in notes from case meetings.

218. Additionally, the investigator may find it useful to amend the standard withheld records schedule to create a working document which records their thinking around key points of the investigation.

Section 12: Ongoing Investigation

Obtaining further comments from the parties during the course of investigation

219. The general policy of the ICO, consistent with sections 47(5) and 53 of the Act, is that submissions will not be exchanged between parties to a review. As submissions made by one or more parties to a review may contain sensitive information that may not be appropriate or legally permissible for disclosure to others, submissions are not usually exchanged.

> **Review**
>
> 47 * * *
>
> (5) Unless permitted by the Commissioner, no person has a right to be present during representations made to the Commissioner by another person, or the right to have access to, or to comment on, representations made by another person.

220. When contacting the applicant or others, the investigator must also keep in mind section 53 of the PATI Act, which requires the Information Commissioner and her staff to keep all information and documents obtained during the course of an investigation confidential except under certain circumstances. This section is particularly relevant to withheld records or parts of records, and any arguments or submissions from the public authority that refer to their withheld content.

> **Obligation to maintain secrecy**
>
> 53 (1) The Commissioner and every person appointed or engaged under section 52 shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions and shall not communicate any such matter to any person except for the purpose of carrying out their functions under this Act.
>
> (2) Information or documents obtained by the Commissioner or any person appointed or engaged under section 52 in the exercise of their functions shall not be disclosed except for the purpose of this Act.

221. While complying with section 53, however, Constitutional principles and the interests of natural justice may require that the applicant or other parties are informed about new material issues, information, or arguments that the public authority raises for the first time during the course of the investigation, and of which they are not aware. This could include, for example, the public authority's assertion of new exemptions or description of pertinent search details not previously disclosed to the applicant.

222. Similarly, consistent with Constitutional principles and the interests of natural justice, the investigator may consider seeking comments from the public authority on any material issues, information, or arguments received for the first time in the course of the investigation from the applicant or a third party, and of which the public authority is not aware.

223. In these circumstances, the investigator should consider whether or not it is necessary to seek additional comments from any of the parties. If the investigator has any doubt about when to seek further comment, advice must be sought during the case meeting.

224. Note that in some cases it may be appropriate to continue the investigation and issue a decision without seeking further comment from the parties, e.g., when a public authority changes its approach to the case in a manner that requires the Information Commissioner to order the public authority to issue a revised internal review decision.

225. Under circumstances where further comment is appropriate and material to the case, the Information Commissioner may instruct the investigator to inform a party or parties, as appropriate, of the new material issues, information, or arguments and to afford them an opportunity to provide further comments.

226. Approval must be sought from the Information Commissioner prior to informing a party of new material issues, information, or arguments, and providing the opportunity to comment. The Information Commissioner's approval or disapproval should be recorded on the case summary sheet.

227. Withheld records or a part of a record, and any referral to the content of a withheld record or part of a record shall not under any circumstances be discussed with or disclosed to anyone during the handling of an application for review, other than the public authority or ICO staff or technical or professional advisors appointed under section 52 of the PATI Act.

228. The investigator must indicate the timeframe within which the party should reply to any request for comment or information (usually a maximum of ten working days). An investigation should not be unnecessarily delayed simply because parties refuse to reply. If any party fails to reply, the investigator should consider whether or not it is

appropriate to progress to concluding the investigation and preparing the investigation findings for the Information Commissioner.

Updates during the investigation

229. Throughout the investigation period, the investigator should keep the applicant up-to-date about what is happening with the investigation. This will be at the discretion of the investigator, but applicants should be advised when important steps are taken in the investigation or if there have been significant delays. In general, applicants should never go more than one month without contact from the investigator.

Meetings with the public authority

230. When there is continued difficulty in obtaining clear submissions from the public authority (which may be due to the complexity or volume of information or history of communications between the public authority and applicant), the investigator may consider arranging a meeting directly with the public authority, to view systems and to achieve clarity on the context of the request or to gain an understanding of how information is stored and managed by the public authority.

231. If these efforts are met with resistance or obstruction by the public authority, the investigator should notify the AIC and consider whether or not to recommend that the Information Commissioner escalate enforcement under section 56, as described below.

Contact with outside resource (e.g., an expert)

232. On limited occasions, it may be necessary to contact an outside resource to provide expert advice on a particular subject. The investigator must obtain the Information Commissioner's approval before contacting outside experts for advice.

233. Section 53 does not prohibit the Information Commissioner from sharing information with her legal counsel and staff, and other professional or legal advisors engaged under section 52 in order to obtain legal, technical, or professional advice in connection with an ongoing application. Any such contact will be made by the Information Commissioner subject to a formal agreement that includes the responsibilities and obligation set forth in section 53.

Abandoned applications

234. The ICO will generally provide applicants with one month, or such other period as the Information Commissioner considers reasonable under the circumstances, from receipt of the application to decide whether or not the application has been withdrawn or abandoned. In practice, an application may also be deemed to be abandoned at any time during the investigation if the applicant fails to reply to correspondence from the

ICO and there is no evidence otherwise that the applicant remains engaged with their application.

235. If an applicant fails to respond to a request for comments, etc., from the ICO, this may indicate that they no longer which to pursue their application for a decision from the Information Commissioner. When this appears to be the case, the investigator should raise this during the case meeting and record the case meeting outcome in the case file. Where agreed, the investigator should write to the applicant using SL03 to ask them to reply within ten working days, and to warn them that their application may be regarded as abandoned if they fail to do so. The investigator must also attempt to contact the applicant by telephone or email.

236. If no reply is received by the applicant, the investigator should discuss the way forward with the Information Commissioner. It may be possible to issue a decision without the comments from the applicant. However, if the Information Commissioner determines that the application should be treated as abandoned, the investigator must issue SL08a by registered delivery, which advises the applicant that the Information Commissioner has determined that no decision will be made as the application has been abandoned, and gives reasons for this determination. This letter must be signed by the Information Commissioner. This letter should also be sent by email to the applicant whenever possible.

237. If the public authority or other parties received notice of the application, the investigator should also send SL08b or c, as appropriate, and the investigator can sign this letter.

Concerns about obstruction

238. If, at any point during the investigation, the investigator becomes concerned that the public authority is not being open and honest about the records it holds, or is being deliberately obstructive, the investigator should immediately discuss this with the Information Commissioner as a potential violation of section 56(4).

Powers of Commissioner

56 * * *

(4) A person who fails or refuses to comply with a requirement under this section [related to the Commissioner's powers when conducting a review to receive documents and evidence and to engage in other forms of investigation] or who hinders or obstructs the Commissioner in the performance of his functions under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or both.

239. If during an investigation the investigator has reason to believe that a section 64 or section 65 offence may have been committed, the Information Commissioner must be notified immediately.

Offence to alter or destroy record

64 (1) Any person who, subject to subsection (2), alters, erases, destroys or conceals any record with the intention of preventing its disclosure under this Act commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for six months or to both such fine and imprisonment.

(2) For the avoidance of doubt, no criminal or civil proceedings shall be brought against any person for anything done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of their employment with a public authority.

General offence

65 (1) Any person who, subject to subsection (2), knowingly contravenes any provision of this Act (other than section 56 or 64) or regulations made under this Act is guilty of an offence and is liable on summary conviction to a fine of $5,000 or to imprisonment for six months or to both such fine and imprisonment.

(2) For the avoidance of doubt, no criminal or civil proceedings shall be brought against any person for anything done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of their employment with a public authority.

Section 13: Investigation Findings

240. Where resolution has failed, or is not appropriate, the investigator must prepare investigation findings, along with any recommendations, for the Information Commissioner to consider. The investigation findings template file must be used.

241. When submitting for formal approval, the investigation findings should be in their final form. The investigator should not, unless directed to do so, submit drafts for formal approval that are incomplete. Rather, guidance should be sought during case meetings on sections of the drafts prior to the formal submission process.

242. Detailed guidance on preparing investigation findings can be found at Appendix 3.

243. At the point of submitting the findings for approval, the investigator should check that:

i. The hard copy case file is prepared in line with our procedures; and

ii. The withheld record(s) under consideration are clearly labelled and that any record which is recommended for disclosure is easily identifiable.

244. The investigator may find it useful to complete an approval checklist prior to submission.

245. The covering note from the investigator submitting the investigation findings for approval must highlight any areas which should be brought to the attention of the approvers.

Section 14: Approval of investigation findings

246. All investigation findings, with the exception of limited cases where the Information Commissioner carries out first level approval, are required to go through two levels of decision approval.

First level approval

247. The investigation findings are to be submitted to the first level approver (identified at case allocation) using the investigation findings approval form. The "summary section" of the investigation findings must be updated at each stage of the approval process to ensure it accurately reflects the outcome of the investigation.

248. The investigator must indicate the next relevant KPI target date on the approval form. The investigator must also include any issues to be brought to the attention of the approvers. Given the restrictions imposed by section 53, it is not always possible for the Information Commissioner to explain in detail her reasoning within the decision itself. These types of issues should be anticipated and included in the approval form.

249. The case file must be set out in such a way that it reflects the standard case file structure, it can easily be understood, and the records that have been withheld, submissions, etc., can be easily found. No loose papers should be contained within the file. If the case file is not adequately prepared, it will be returned to the investigator.

250. Unless the case file is in active use, it should be stored in the safe in the secure room. Case files should not be stored in any office when the staff member is absent.

251. The first level approver will consider whether or not the investigation findings, including the recommendations:

i. are lawful;

ii. reflect an investigation carried out in accordance with these procedures and what has been agreed at triage/case meetings; and

iii. are generally at the standard required by the ICO.

252. Further work may be required by the investigator at this stage, before the first level approver is satisfied that the investigation findings are ready to be passed for second level approval.

253. When significant alterations are made to the investigation findings, the case should be returned to the investigator prior to being submitted for second level approval to ensure that the case file is appropriately prepared, e.g., any records that the investigation findings recommend to be disclosed remain clearly identifiable.

254. Once satisfied, the first level approver must record their approval on the approval form and note any further issues that should be brought to the attention of the second approver.

Second level approval

255. Before progressing any investigation findings to the second level approver, the investigator should prepare and recheck the hard copy case file.

256. On submission for second level approval, the first level approver must complete the following sections in the approval form:

i. Why resolution was not achieved or thought not appropriate during the investigation;

ii. Whether the decision is likely to attract media attention; and

iii. Highlight the next KPI target date.

257. The second level approver will consider whether:

i. any remaining information, records, or research are outstanding; and

ii. the findings and any recommendations are logical, well-reasoned, and have adequate factual and legal support.

258. Further work by the investigator should usually not be required at this time, having been addressed at a prior stage.

259. Once the second level of approval is recorded, the investigation is finalised for the Information Commissioner's formal consideration.

Section 15: Decision

260. After consideration of the approved investigation findings, the case file, and all relevant information, the Information Commissioner shall make a written decision on the application.

261. On review, section 48 of the PATI Act authorises the Information Commissioner to affirm, vary, or reverse a public authority's decision, as well as to make other orders consistent with the PATI Act which the Information Commissioner considers appropriate. This may include ordering disclosure of some or all of the withheld, responsive records. The decision may also uphold the public authority's decision to exempt some or all of the records.

262. Consistent with section 48(3) of the PATI Act, a decision of the Information Commissioner is binding on all persons, including public authorities, affected by it and may be enforced through the Supreme Court.

263. Section 49 provides that any person, including a public authority, aggrieved by a decision of the Information Commissioner may apply to the Supreme Court for judicial review of the decision. The Supreme Court, upon consideration of the application, may confirm, vary, remit, or set aside the Information Commissioner's decision.

Section 16: Issuance of the decision

Preparing decision for issuance

264. The Information Commissioner and AIC must approve the content of the covering letters prior to their approval.

265. Once the covering letters are approved, the AIC will enter the decision number in the case file and add this to the decision, along with the date of issue.

266. The AIC should check that all tracked changes/comments have been addressed and removed from the decision and that it remains coherent.

267. In sensitive or high profile cases, the AIC should organise a case team meeting in advance of the decision being issued to discuss a strategy for responding to media inquiries. This case team meeting may include the Policy and Education Officer.

Issuance

268. If approved prior to 2pm, the decision will normally be issued on the same date. If approved after 2pm, the decision will be issued the following day, subject to certain exceptional circumstances. The decision should be filed with the Registrar of the Supreme Court on the day of issuance.

269. As soon as the AIC has a decision number, they should alert the OM to let them know when the decision will be issued and ask them to prepare copies of the decision for signature. The AIC must provide the OM with the following information and documents:

i. when the decision is to be issued;

ii. the covering letters;

iii. the decision reference number; and

iv. the decision.

270. The OM should be given as much notice as possible that a decision is to be prepared.

271. The OM will check the formatting of the decision notice and that there are no obvious errors/omissions in the covering letters.

272. The ICO first provides each party with a copy of the decision on the day of issuance and prior to publishing on the ICO website and issuing a press release, where appropriate. The applicant (as well as the original requester if this is not the applicant) is not named or otherwise identified in the decision or press release.

273. The OM will print off and bind the required copies of the decision, and arrange for both to be signed alongside the covering letters by the Information Commissioner. The OM will then arrange for the decision to be hand delivered and will complete the post log book.

274. Occasionally, a redacted version of the information (showing what is and it not to be disclosed in order to comply with the decision) will be sent to the public authority along with the decision. Where this happens, the OM plus one another member of staff (preferably the investigator), must check the envelope to ensure that the information is being sent to the public authority and not to the applicant. A note must be added to the case file to record that this has happened.

275. The AIC will arrange for the decision to be filed with the Registrar of the Supreme Court.

276. Once signed, the OM will place a copy of the signed covering letters and the signed decision in the case file, and notify the investigator that the decision has been signed.

277. Once notified that the decision has been signed, the investigator should:

i. Prepare a PDF of the final version of the decision and send this by email to the head of the authority and, where the investigator has an email address from the applicant, to the applicant. This email should be sent the day the decision is hand delivered.

ii. As explained in Section 17 of this Handbook, make a note in the case file to check compliance with the decision on the stated deadline as well as to close the case and arrange for the OM to destroy the case file seven years from the date of the decision is issued (subject to judicial review).

278. The investigator must send the AIC the website upload template.

279. The AIC will publish the decision on the website, not less than five working days following date of issue (unless a separate timescale has been agreed).

280. In some cases, the applicant or the public authority may seek further clarification of the Information Commissioner's decision because they do not understand or agree with it. The investigator or AIC, as appropriate, will work to provide clarification, but will not enter into detailed discussions with either the applicant or public authority. The investigator and AIC should use the standard template letter in responding to post-decision inquiries.

Section 17: Checking compliance and closing the case

Compliance required

281. The investigator will check compliance with the public authority and applicant at the appropriate time, unless confirmation has been received prior to this.

282. Evidence of compliance will have been stipulated in the covering decision letter, in most cases verification should be possible on the basis of a confirmation letter (SL17a) and schedule of records sent to the applicant, combined with the applicant's confirmation that these have been received. There will be cases (partial disclosures) where the actual records disclosed to the applicant require to be seen. Where the disclosed records have been posted on the authority website, a link to the relevant pages should generally be sufficient. In some cases, the investigator will need to use SL17b to ask the public authority to confirm its compliance directly.

283. If compliance is confirmed, the investigator will issue compliance letters (SL18a, b, or c) and record the date of the compliance in the case file. The investigator should close the case file seven months after the date that compliance is confirmed.

284. If compliance is not confirmed and judicial review has not been sought, the investigator must notify the Information Commissioner to discuss whether enforcement of the decision is necessary, as outlined in section 18 of this Handbook.

No compliance required

285. The investigator should close the case file seven months after the date of decision. The investigator should ensure at this point that the withheld information is **clearly** flagged within the case file for ease of destruction by the OM. This also applies to cases closed during the course of the investigation.

No judicial review sought

286. If judicial review is not sought, the OM will return any information either party has asked to be returned (which will include original documents), which should be returned within one year from the issuance of the decision. The OM will destroy any other documentary evidence and the contents of the case file six years after the issuance of the decision. The OM will add a note to the case file index recording the return or destruction of the documentary evidence and the contents of the case file.

Judicial review sought

287. If judicial review is sought, the investigator must notify the AIC and the Information Commissioner immediately and follow the guidance in Section 19 of this Handbook.

Section 18: Enforcement of decision

288. If the public authority has not complied with the steps required in the decision the Commissioner has the authority, under section 48(3), to seek its enforcement through judicial proceedings.

289. If a public authority has advised the ICO in writing that it does not intend to comply with the decision, the Information Commissioner may move immediately to judicial proceedings to enforce the decision at the expiry of the deadline for compliance.

290. Unless the public authority has advised the ICO that it does not intend to comply with a decision, the following steps will normally be followed before judicial proceedings are initiated.

291. The investigator should prepare SL19. This reminds the public authority that they have a duty to comply with the decision of the Information Commissioner and that failure to do so is likely to lead to judicial enforcement. The letter must be sent to the head of the authority. The public authority will be given ten working days to comply with the decision. The letter will be signed by the Information Commissioner.

292. If, after ten working days, the authority still has not complied, the investigator must alert the Information Commissioner. Depending on the circumstances, the Information Commissioner may ask the investigator to prepare SL20 to the public authority, requiring them to comply with the decision within five working days. The letter must be sent to the head of the public authority and be signed by the Information Commissioner.

293. Where appropriate, the Information Commissioner may discuss the matter with the ICO's legal counsel and instruct them to initiate judicial enforcement proceedings.

294. Where the public authority only partially complies with the decision, the steps set out above should be taken, unless the public authority has advised us in writing that it does not intend to comply with the remainder of the decision. However, the investigator should also contact the applicant to find out his or her views on the partial disclosure of information, as this will be taken into account in deciding whether or not to enforce the decision.

295. Once the case is completed, any decision issued by the Court will be published on the ICO decision database.

Section 19: Judicial review

296. This section is only relevant when the public authority, applicant, or third party/original requester seeks judicial review of the Information Commissioner's decision. It is possible, although unlikely, that multiple parties could seek judicial review of the same decision.

297. When written confirmation is received from any party that they have sought judicial review or intend to seek judicial review of a decision of the Information Commissioner, the Information Commissioner and AIC must be informed immediately and a note placed in the case file.

298. The Information Commissioner will ask the AIC to add a note to the online version of the decision, advising that an application for judicial review is pending. The AIC will also include the case in the list of judicial review cases.

299. When an application for judicial review is served on the ICO, the Information Commissioner will contact our external legal counsel.

300. A meeting is likely to be necessary to determine whether or not the decision should be defended. In most cases, this will involve counsel. In advance of this meeting, a full copy of the case file must be provided to counsel—it is the responsibility of the investigator to prepare this copy (or arrange for a copy to be made).

301. The investigator is likely to be asked to accompany the Information Commissioner and AIC to meetings with the external counsel and to any hearing and to provide other, general assistance with the case.

302. Once the outcome of the court case is known, the AIC will note the outcome of the case in the case file. A link to the online version of the court's decision will be added to the ICO's decision database on our website.

303. The OM should destroy the documentary evidence and case file seven years after compliance with the final decision is confirmed in writing, or if no compliance is required, from the date of the final decision.

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Appendix 1: Technical validation guidance

Purpose of technical validation

1. The Information Commissioner, through the efforts of the validator, must establish that an application is eligible to be investigated and decided by her. An invalid application cannot be investigated or decided by the Information Commissioner.

2. If an application is wrongly validated, then any subsequent decision would be unenforceable and made in error. This guidance is designed to assist the validator in coming to a view as to whether or not the application is valid.

Technical validation of applications

3. The applicant must have gone through these two basic steps before they can make a valid application to the Commissioner:

   Step 1: They must make a valid request for record(s) to a public authority as defined in the section 13 of the PATI Act and regulation 3 of the PATI Regulations.

   Step 2: They must have asked the head of the public authority to review the decision of the Information Officer (the 'internal review').

4. The application must also be in writing, as required by section 45 of the PATI Act.

5. A validator should be familiar with section 1 of the Handbook and use the *Technical Validation Checklist* (Appendix 2) to confirm the technical validity of an application.

6. If a validator finds that circumstances in an individual application are not captured by the validation checklist or the Handbook, the validator should seek advice from the AIC or the Information Commissioner before proceeding.

Appendix 2: Technical validation checklist

Review Technical Validation Checklist	Review No.:
Background Facts	
Initial PATI Request	**YES or NO**
Is the PATI request for information in writing?	
Did the PA take an extension of time?	
If so, did the PA comply with s. 15? (Decision made by HOA; correct timeframe applied; correct reasons: public interest or third party consultations, unreasonable interference?)	
Request for Internal Review	
Did the applicant ask for an internal review by the head of the public authority?	
If not, APP is invalid and not capable of validation. Prepare case note and draft appropriate SL04 notice. (If deadline for requesting an internal review is imminent, act quickly to allow applicant to meet deadline.)	
If so, was the request for internal review made in writing?	
Does the request for internal review specify the PATI request which the internal review relates?	
Was the request for internal review submitted within six week of the Information Officer's decision?	
If not, did the requester ask for the head to exercise discretion to accept the application out of time?	
If so, did the HOA accept the application for internal review out of time?	
Section 45 technical requirements	
Application for (independent) Review to Information Commissioner	
Is the application to the Commissioner for review received in writing?	
Is the entity a public authority under schedule to the PATI Act (or is it potentially a public authority that has not yet been recognised as such)?	
If not, APP is invalid and not capable of validation (unless a potential PA is involved). Prepare case note and appropriate SL04 notice.	
Do we have a copy of the initial PATI request? (If not, get copy from APP)	
Did the applicant receive an initial decision by the Information Officer? (If so, get copy from APP)	

If not, did applicant request internal review by HOA within 6 weeks after decision was due?	
Did the applicant receive a final decision from the head of the authority? (If so, get copy from APP)	
If a final decision was issued, is the application for IC review received within 6 weeks after the applicant received notification of HOA's decision (i.e., is the application out-of-time)?	
If not, has the applicant asked the IC to exercise discretion to extend the time period?	
Has the IC agreed to accept the out-of-time (late) application?	
If no final decision was issued, is the application for IC review received after six weeks from the date the applicant submitted the request for an internal review (i.e., there has been a failure to decide)?	
Is there any doubt that the applicant is Bermudian or resident at the time of submitting a PATI request? (If so, discuss with AIC to confirm applicant's eligibility for review)	
Notes	

Appendix 3: Drafting the investigation findings

Part 1: General

Introduction

1. An investigation should be pursued in such a fashion that every party receives fair and through consideration of their submissions. The investigation findings should make clear that the investigator has accurately taken into account all relevant information, including the following:

    i. The records or part of records in dispute

    ii. The relevant views and material provided by the public authority

    iii. The relevant views and material provided by the applicant

    iv. The relevant views and material provided by third parties or the original requester, where appropriate.

2. It is the responsibility of the investigator to ensure that the investigation findings (including any recommendations) and all material information on which the investigation relies upon is held in the case file and retained for as long as it is required in accordance with the Handbook. Supportive material information may include, but is not limited to, documentary evidence, correspondence, and any records of meetings, telephone conversations, discussions, actions, research, and analyses.

3. The investigative findings should also specify any references which the investigator has called upon in coming to their findings and any recommendations, and in understanding and applying the PATI Act. References may include sources as diverse as:

    i. Legal precedent

    ii. Comparable decisions of the Information Commissioner and public access to information cases in other jurisdictions

    iii. Dictionary definitions

    iv. Relevant information in the public domain

    v. Legal advice

    vi. Technical advice

4. All references are to be cited within the body of the text and by using footnotes.

General presentation

5. The relevant investigation findings template must be used and the style and layout must follow the formatting instructions in the template. The standardisation of the investigation findings helps ensure that investigation quality is maintained across different applications and over time.

6. Within this overall framework, clear, concise, and logical presentation of the facts and arguments is of particular importance, as is consistent use of language and tense. Particular care is required when 'cutting and pasting' text from elsewhere, to ensure that the inserted text is accurate and makes sense in the context of the investigation findings being drafted.

7. The investigation findings will be written in the third person, referring to 'the Information Commissioner', the 'Information Commissioner's Office', and the 'investigating officer', as appropriate.

8. The public authority should be referred to by name, the 'head of the public authority', and the 'information officer', as appropriate. The names of individual members of the public authority shall not be referenced.

9. Each section of the investigation findings listed below should include the information described.

Summary

10. Brief summary of the records requested and the factual steps taken leading up to the application to the Information Commissioner. This section should also include a brief statement of the investigation findings and any recommendations, indicating in particular any key failures to comply with the PATI Act and a brief outline of the reasoning. The aim here is to give a summary of the main points of the investigation, rather than simply noting that a request, followed by a request for internal review, etc., was made.

Relevant statutory provisions

11. Accurately list the provisions of the PATI Act and any other relevant legislation (i.e., a governing statutory provision that prohibits disclosure), with reference to the Appendix where the relevant provisions are set out in full.

Background

12. Concise details of what the application to the Information Commissioner is about, from the applicant's initial PATI request to the validation of the application. This should include details of the following:

i. the applicant's request for records, sufficient to identify the records requested, the public authority, and when the request was made;

ii. the public authority's response to the request (i.e., if, how, and when it responded, including any exemptions cited);

iii. the applicant's request for an internal review, including when it was made and the basis of the request;

iv. the public authority's response to the internal review (i.e., if, how, and when the head of the public authority responded, including any changes made to its original decision); and

v. the application to the Information Commissioner, including when it was made and its validation.

Investigation summary

13. This section should confirm that:

    i. All required parties were given a reasonable opportunity to make representations on the application, as required by section 47(4); and

    ii. The records in dispute have been obtained from the public authority and inspected, as appropriate (or, for example, the steps the public authority has taken to confirm that the records are not held).

14. If not readily apparent from the "Background" section, the scope of the investigation should also be made clear and, where appropriate, explained.

15. The investigation summary should also bring out the key points made in the submissions received. It should also identify any relevant developments prior to the investigation's conclusion (e.g., partial disclosures of records/partial settlement).

Findings, recommendations, and analysis

16. This is the core of the investigation findings. It is broken down into consideration of the key questions which the investigation is required to address and should confirm that all relevant issues have been given due consideration in reaching the findings. The starting point in identifying the relevant issues should be the issues on review identified by the application. Where a number of different issues are to be considered, a paragraph early on in the section should outline the matters to be addressed and the order in which they will be considered in the text.

17. The analysis will consider the matters in dispute, expand on the key submissions made by the parties, and then comment on the merits of each submission. In so doing, the

investigator should cite the references which inform the analysis. All of this should be done as succinctly as possible without losing meaning.

18. The purpose of this section is to set out clearly how the investigator arrived at the findings and the reasons for any recommendations. This section must also be presented in a detached and impartial (and generally reasonable) manner.

19. When the investigator determines that it not necessary for any reason to consider certain of the exemptions cited by the authority, this should be stated clearly, following conclusions on those exemptions which have been considered.

20. Investigation findings on individual records should be presented in a way which is appropriate and proportionate to the information under consideration and any recommendations in respect of those records. Detailed schedules of records may be helpful in certain cases but should not be used indiscriminately.

Appendix

21. Full and accurate text of any statutory provision referenced in the investigation findings should be included in the Appendix. Ensure that this is wholly consistent with the provisions listed in the "Relevant Statutory Provisions" section of the investigation findings.

Appendix 4: List of standard letters

For ease of reference, a list of the standard letters (SL) is provided.

Title	Purpose	Stage
SL01 Acknowledgement – Applicant	Acknowledge receipt of application for review and send *Applicant's Guide*	Validation
SL02 Request for info – Applicant	Asks applicant to provide copies of missing correspondence/public authority's decisions	Validation
SL03 Final reminder – Applicant	Registered mail letter giving applicant a final 10 days to provide the missing information for validation or communicate with the ICO	Validation
SL04a Not valid – out of time – Applicant	Application made out of time and opportunity to request that Information Commissioner exercise discretion to accept	Validation
SL04b Not valid – too early – Applicant	Application made too early and explains steps to take before submitting a new application	Validation
SL04c Not valid – entity is not a public authority – Applicant	Application is not from a decision by a public authority	Validation
SL04d Not valid – improper section 44 referral – Public Authority	Initial decision was not made by the head of the authority	Validation
SL05a Seeking comment on out of time application – Public Authority, third party, or original requester	Seeking comments from public authority, third party, or original requester on whether or not to accept an out of time application	Validation

SL05b Notice that comments sought – Applicant	Notifies applicant that comments have been sought on whether or not to accept an application out of time	Validation
SL06a Notice to accept out of time application – Applicant	Notifies applicant of Information Commissioner's decision to exercise discretion to accept application and provides reasoning	Validation
SL06b Notice not to accept out of time application – Applicant	Notifies applicant of Information Commissioner's decision not to exercise discretion to accept application and provides reasoning	Validation
SL06c Notice to accept out of time application – Public authority, third party, or original requester	Notifies public authority, third party, or original requester of Information Commissioner's decision to exercise discretion to accept application and provides reasoning	Validation
SL06d Notice not to accept out of time application – Public authority, third party, or original requester	Notifies public authority, third party, or original requester of Information Commissioner's decision not to exercise discretion to accept application and provides reasoning	Validation
SL07a Valid application – Applicant	Notice to applicant of valid application and requesting applicant to confirm matters on review	Validation
SL07b Valid application (FTD) – Applicant	Notifies applicant of valid application and explains that the investigation and decision will focus only on FTD aspects	Validation
SL08a Abandoned – Applicant	Notifies via registered mail that case has been closed because no response to ICO's request for additional information	Validation/Investigation
SL08b Abandoned –	Notifies public authority that case has	Validation/Investigation

Public authority	been closed	
SL08c Abandoned – Third party or original requester	Notifies third party or original requester that case has been closed	Validation/Investigation
SL09 Confirming satisfaction of settlement – Applicant	Requests written confirmation from applicant that settlement terms are satisfied and notifies that, if so, withdrawal will be accepted	Investigation
SL10a Withdrawn - Applicant	Confirms via recorded delivery letter that case is closed after acceptance of applicant's withdrawal	Validation/Investigation
SL10b Withdrawn – Public authority	Notifying public authority that case has been closed after acceptance of applicant's withdrawal and review of learning points/practice issues	Investigation
SL10c Withdrawn – Third party or original requester	Notifies third party or original requester that case has been closed after acceptance of applicant's withdrawal	Investigation
SL11a Notice of valid application and seeking withheld records – Public authority	Notice to public authority of valid application and requesting withheld records (no section 46 process)	Investigation
SL11b Notice of valid FTD application and seeking submissions – Public authority	Notice to public authority of valid FTD application and investigation, and asking public authority for submissions (no section 46 process)	Investigation
SL11d Notice of section 46 process – Applicant	Notice to applicant suggesting section 46 process	Investigation
SL11e Notice of valid application	Notice to public authority of valid application and suggesting section 46	Investigation

(section 46)– Public authority	process	
SL11f Notice of valid application (section 46) – Third party or original requester	Notice to third party or original requester of valid application and suggesting section 46 process	Investigation
SL12a Notice of investigation after section 46 process – Applicant	Notice to applicant that application is moving to investigation stage and clarification of remaining issues after unsuccessful or partially successful section 46 process	Investigation
SL12b Notice of investigation after section 46 process – Public authority	Notice to public authority that application is moving to investigation stage and clarification of remaining issues after unsuccessful or partially successful section 46 process, as well as seeking withheld records	Investigation
SL12c Notice of investigation after section 46 process – Third party or original requester	Notice to third party or original requester that application is moving to investigation stage and clarification of remaining issues after unsuccessful or partially successful section 46 process	Investigation
SL13a Seeking submissions – Applicant	Inviting applicant to submit any additional comments or evidence	Investigation
SL13b Notice of valid application and seeking submissions – Third party or original requester	Notice to third party or original requester of valid application and inviting them to submit any additional comments or evidence	Investigation
SL14 Seeking submissions – Public authority	Asking public authority for detailed submissions, including responses to ICO investigation questions	Investigation

SL15a Decision FTD covering letter – Public authority	FTD decision covering letter for public authority	Investigation
SL15b Decision FTD covering letter – applicant	FTD decision covering letter for applicant	Investigation
SL16a Document return to public authority	Returning documents to public authority and/or confirming their destruction	Compliance
SL16b Document return to applicant/other	Returning documents to applicant and/or confirming their destruction	Compliance
SL17a Confirm compliance – Applicant	Asking applicant if public authority has complied with decision	Compliance
SL17b Confirm compliance – Public authority	Asking the public authority to confirm its compliance	Compliance
SL18a Complied – Applicant	Informing applicant that public authority has complied with decision	Compliance
SL18b Complied – Public authority	Confirming compliance	Compliance
SL18c Complied – Third party or original requester	Informing third party or original requester that public authority has complied with decision	Compliance
SL19 Enforcement notice	Formal notice to public authority of failure to comply with a decision	Enforcement
SL20 Final Enforcement notice	Final notice prior to judicial enforcement action	Enforcement

Document control sheet

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Date	**Actioned by** *(initials)*	**Version updated** *(e.g. v1.0-5 or v2.1-5)*	**New version number** *(e.g. v1.2-5 or 2.1-5)*	**Brief description of changes** *(e.g. updated paras. 8-12 to change head of public authority to Information Officer; reviewed the entire section on notice to third parties; corrected typos; reformatted to new logo/branding)*