Information Commissioner's Office

Guidelines and Procedures

Responding to PATI requests for public records

September 2021

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Introduction

1. This document sets out the guiding principles and procedures that should be followed when the Information Commissioner's Office (ICO) receives and responds to requests for public records under section 13 of the Public Access to Information Act (**PATI**) 2010.

2. These guidelines aim to give procedural guidance and reflect the practice guidance provided in the Minister's Administrative Code of Practice for Public Authorities (January 2020) (**PATI Practice Code**), particularly section D. Staff are expected to refer to the Information Commissioner's published guidances, presentation notes, internal memos and advice on technical issues. This document only gives technical guidance in relation to specific legislative provisions where none is yet available through published briefings and guidance, or a specific interpretation applies to the Information Commissioner's Office (**ICO**).

3. Requesters have slightly different rights to access to records held by the ICO when making PATI requests. Unlike requesting information from other public authorities in Bermuda, requesters who are not satisfied with the ICO's handling of their PATI requests can only ask for an internal review by the Information Commissioner as the head of the public authority, but cannot file an application for an independent review by the Information Commissioner. If they are dissatisfied with the way we have responded, they can seek to have our decision judicially reviewed and/or complain about our service to the Office of the Ombudsman. This means it is especially important for us to be as thorough and accurate as possible, particularly at the internal review stage. At the same time, a proportionate approach should be taken, based on good public administration, including effective communication and helping requesters.

Policy and principles

4. The ICO will respond to all PATI and internal review requests promptly. The actual time taken will depend on the request and the amount of records held. The general principle is that a response will be made as soon as practicable, within statutory timescales.

5. The presumption is always that records will be disclosed. We must always ask ourselves: even when an exemption applies and a record could be withheld, should it be withheld? Unless there is an overriding reason for non-disclosure (e.g. personal information, or risk to the organisation), we should disclose as much as possible.

6. PATI requests are an opportunity to engage and communicate with stakeholders. Where needed, responses should inform, assist and advise requesters, by providing explanations and context that help them to understand and interpret the record disclosed or why it is being withheld.

7. We will ensure that when a record is disclosed, we will consider whether to include it in our Information Statement at 'Section D: Classes of records and documents held'.

8. When a record is withheld, we will consider whether it would be beneficial to stakeholders to provide an explanation on our website.
9. The ICO will monitor our performance, and publish statistical information about how we respond to PATI requests and internal reviews, at least annually.

Role and responsibilities

The PATI Practice Code outlines in detail the responsibilities of various roles for the administration of the PATI Act. For purposes of responding to a PATI request, the ICO officers' responsibilities are as follows:

Role	**Responsibility**
Ensuring procedures and guidance are reviewed and updated (where actual reviewing likely to be delegated to colleagues)	Information Commissioner/ Deputy Information Commissioner
Designating an Information Officer	Information Commissioner/ Deputy Information Commissioner
Responding to PATI requests	Information Officer
Management check of responses	Information Officer
Responding to internal review requests	Information Commissioner
Searching for and locating records	Any individual whose assistance is requested by the Information Officer, or Information Commissioner (for internal reviews)
Logging and tracking PATI requests	Information Officer

Responding to PATI requests

Figure A: Overview for initial response

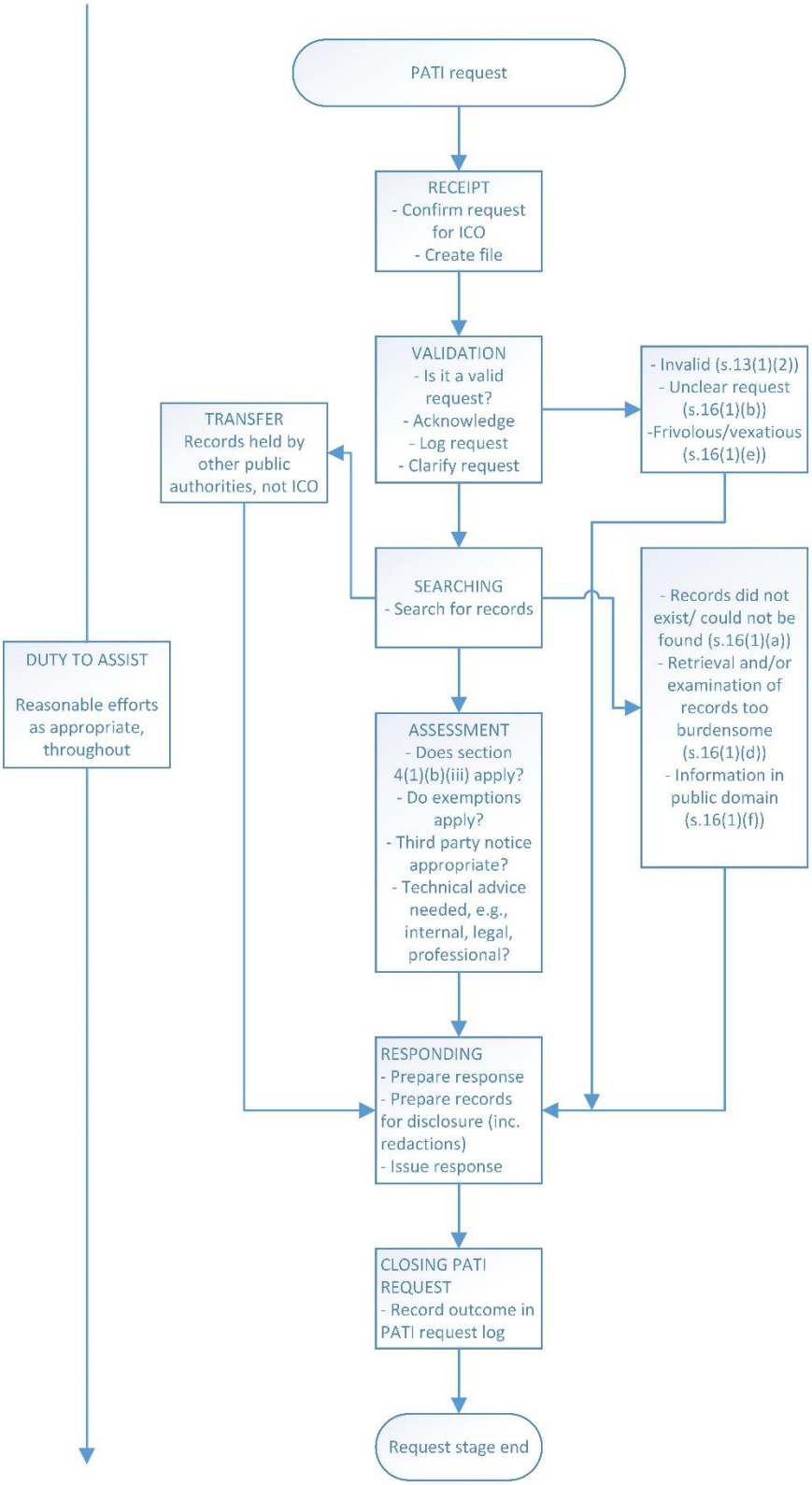


Figure A broadly sets out the process which should be followed when initially responding to a PATI request. Applying this process is not meant to be linear and requires judgment as to which parts can be carried out concurrently. Further details on the steps for initially processing a request may be found in section D.14 to D.16 of the Practice Code.

Keeping the requester's identity confidential

10. Section 12(4) of the PATI Act requires the ICO to keep the identity of a requester confidential. The ICO should not disclose the identity of a requester to anyone, save for those who need to know the requester's identify to fulfill a responsibility with processing the PATI request. This requirement applies at all times, unless:
    a. the requester consents to the disclosure of their identity; and/or
    b. the disclosure was required for a person to deal with the PATI request.
11. The requester's consent to the disclosure of their identity must be in writing.
12. The requirement to keep the identity of the requester confidential does not mean that the Information Officer cannot disclose the fact that the ICO has received a PATI request. In many circumstances, it may be appropriate for the Information Officer to contact their colleagues and ask for assistance with searching for records responsive to the PATI request. In doing so, however, the Information Officer should make reasonable efforts not to disclose the identity of the requester to their colleagues, unless it is absolutely necessary.

Receipt of a request for records

13. The overall aim of this part of the process is to assess and decide whether the request is for the ICO and to set up the file.
14. Apart from requests for educational, business or compliance records that the ICO routinely provides, all requests for records received by the ICO should be brought to the attention of the Information Officer as soon as possible, irrespective of who receives them, how they are received or whether they refer to the PATI Act. The Information Officer should make the initial assessment about whether it is a PATI request. When in doubt, advice on whether something is a PATI request should be sought from the Information Commissioner.
15. If the request is contained within a letter, email or complaint which deals with other issues, the officer receiving the request should copy it, highlight the part containing the request and pass it to the Information Officer immediately.

Opening files and logging the PATI request

16. The Information Officer will create electronic files on the request. Whether a hard-copy file is needed is a matter of judgment, based on the request itself. It is important that both the hard-copy and electronic files are up-to-date.

17. When opening the file, the Information Officer should log the PATI request in the ICO internal PATI request log and include relevant information, such as the date of receipt and the expiry dates of the timeframes under the PATI Act (when an acknowledgment letter, initial decision and internal review decisions are due, etc.) Hard-copy and electronic records related to initial PATI requests should be maintained in the limited access file system. The file system is accessible only by the Information Officer and Acting Information Officer.

18. Note that when the case is closed, the Information Officer is responsible for record-keeping and will recycle hard-copy files, and organise papers to minimise storage space.

Acknowledgment

19. In accordance with section 13(4) of the PATI Act, the ICO should acknowledge receipt of a request within five working days after receipt of the PATI request. Standard letter PATI01 should be used.

Validation

20. To be a valid request under the PATI Act, a request must meet the requirements set out in subsections 13(1) and (2) of the PATI Act. In summary, the request must:

    a. be made in writing, and

    b. describe the records requested, or contain sufficient information to allow the ICO to identify the records.

21. The PATI Act does not allow a request to be made anonymously. A PATI request should therefore also state the name of the requester and sufficient contact details to allow staff to respond to them.

22. Depending on the circumstances of each request, it may not be necessary for the Information Officer to confirm the identity of the requester or whether the requester is a Bermudian or a resident of Bermuda. If, for example, the requester has previously filed a PATI request to the ICO or was a party in a review considered by the Information Commissioner, the Information Officer need not confirm their identity again.

23. It is recommended the Information Officer seek further guidance from the Information Commissioner if unsure or if the request appears to be anything other than straightforward.

24. If a request is clearly **not** valid, the Information Officer should contact the requester immediately by the quickest method and give assistance as needed. Subsequent action will depend on the outcome of that contact.

25. If a request is clearly **not** valid (i.e., the request was not made in writing or the requester is not a Bermudian or resident), but the request is straightforward:

    a. if information is not held, the requester should be told this and assistance given as appropriate;

    b. if information is held and can be disclosed in full, it should be sent to the requester even if the request is invalid and assistance given as appropriate.

26. In both instances, the advice and assistance should explain that, as the request has not been responded to under the PATI Act, there is no right to seek an internal review. It should also explain what needs to be done to make a valid request.

Clarification of the request

27. There are many reasons why a request may require clarification, the most common being it is simply unclear what the requester is asking for.

28. Subsections 16(1)(b) and 16(2) of the PATI Act deal with the issue of unclear requests. If such a request is received, the Information Officer must provide assistance in accordance with section 16(2) of the PATI Act and the duty to assist in section 12(2)(a) of the PATI Act before refusing the request under section 16(1)(b) or looking for the records. See "Duty to assist" section below.

29. It is critical that the Information Officer responding to the request is clear about what is being asked for. If there is any doubt, and it is reasonable to do so, clarification should be sought, and the reasons why we are seeking it explained clearly to the requester. For example:

    a. the information requested is framed in too general a manner to be clear;

    b. the request uses ambiguous or unknown terms; or

    c. the request contains acronyms or abbreviations that are either unknown, or could have several meanings.

30. It is a matter of judgment for the Information Officer as to how much clarification is needed, but it should be remembered that the requester may seek an internal review, so the meaning will also need to be clear to the Information Commissioner to conduct the internal review.

31. It is recommended that the Information Officer seeks a written confirmation from the requester that their understanding of the PATI request is accurate.

Process of seeking clarification

32. The Information Officer should use the most efficient method to help the requester respond quickly. A helpful approach is to say what you *think* the requester is asking for and to explore with them your understanding.

    a. By **phone**: if the clarification sought is something quick and simple (e.g. confirming what an acronym stands for, or clarifying timescales), this can be done by phone, and a note created of the conversation. If the request appears complex, it is good practice to phone the requester to offer assistance, and then to follow this up with a letter or email to confirm and document the offer of assistance

    b. By **letter**: standard letter PATI02 can be used to do this.

    c. By **email**: straightforward clarification can be sought in the body of the email. If the matter is complex, standard letter PATI02 should be used.

33. It is good practice to inform the requester of records we hold that we think are in scope, making it clear that we have done so to be helpful, not because we were required to.

34. If after ten working days from the date clarification is sought the requester has not clarified the scope of the PATI request, the Information Officer should write the requester explaining that, if it were to remain unclarified, the request will likely be refused under section 16(1)(b) of the PATI Act. The Information Officer should give the requester an additional five working days to clarify the PATI request. Upon request, the Information Officer may grant an extension of time for the requester to respond, if doing so is reasonable.

35. If, within the set timeline, the PATI request could not be clarified, the Information Officer will need to decide whether to issue an initial decision based on the Information Officer's understanding of the PATI request, or to issue an initial decision refusing the request under section 16(1)(b) of the PATI Act, as appropriate. Substantive responses should be provided whenever possible. The requester must be told about their right to request an internal review.

Transfer of misdirected PATI requests

36. A large proportion of the PATI requests we receive are for records which are not held by the ICO. Often it can be difficult to decide whether it is an enquiry because the request was simply misdirected to us, or whether it is a PATI request. It may be necessary to clarify this before taking any action. If that is the case, clarification should, if possible, be by phone or email. If phone/email contact details are not held, rather than delay, treat the request as a PATI request. Seek the Information Commissioner's advice when needed, but broadly speaking:

    a. If it is obvious that the requester has misunderstood the role and remit of the ICO, and has misdirected their request, but is still requesting records, then it should be

treated as a PATI request. The section on transfer of PATI requests in this document will be relevant.

b. If the requester is clearly seeking information (or guidance) about where to go for information, then it should be treated as an enquiry.

c. If it is unclear, then it should be treated as a PATI request.

37. Where the Information Officer treats a misdirected request as a PATI request but the requester subsequently confirms: (i) the request was misdirected; (ii) they do not wish the request to be transferred to another public authority; and (iii) they would like to withdraw the PATI request, the Information Officer should close the case and ensure that the requester's confirmation was documented.

38. Misdirected requests and enquiries will normally be allocated to the Information Officer, and must be responded to within five working days. The Information Officer should first of all check that the request is valid (see above).

39. If it is valid, the Information Officer should take any reasonable steps to check whether the ICO holds any of the records requested. This may involve checking with the Information Commissioner and colleagues whether any ongoing or recent case has considered the type of records the requester is seeking.

40. In order to comply with the PATI Act (and provided the records are not held), the initial decision must explain that the records requested are not held. If it is known where the request should have been directed, the request should be transferred to the correct public authority in accordance with section 13(5) of the PATI Act. The section on transfer of PATI requests in this document will be relevant. Note that a transfer of a PATI request must occur within five (5) working days from receipt of the PATI request.

41. Whether or not records are held, if the Information Officer believes section 38 (non-disclosure of existence of a record) applies, guidance should be sought from the Information Commissioner. The requester must be advised that they have a legal right to request a review of the response, even where it is extremely unlikely that this right would be exercised.

Frivolous or vexatious request (section 16(1)(e))

42. The ICO can refuse to comply with a frivolous or vexatious request (section 16(1)(e) of the PATI Act). Consideration as to whether a request is 'frivolous' or 'vexatious' applies at every stage of responding to a request, but is most likely to be in the early stages.

43. The Information Commissioner should be consulted for guidance if a request is believed to be frivolous or vexatious. If it is determined that the request is frivolous or vexatious, letter PATI03 should be issued, in consultation with the Information Commissioner.

Duty to assist

44. Section 12(1)(a) of the PATI Act requires the ICO to provide reasonable assistance to assist persons in connection with requests.

45. This duty extends to "persons in connection with requests". It is not limited to PATI requesters who have already submitted requests. It arises when persons may be considering filing a PATI request and have questions for the ICO.

46. The duty also does not expire after the ICO has interpreted the request and located records. It continues throughout the processing of the request.

47. The ICO "shall make every reasonable effort" to assist persons in connection with requests. This requires the effort that a fair and rational person would expect to be made under all of the circumstances. The ICO may need to consider factors such as the nature of the request and the resources of the ICO.

48. The ICO has the burden to ensure that it volunteers its assistance when it is reasonable to do so, regardless of whether the requester specifically asked for assistance.

49. As noted above, the duty to assist continues throughout the processing of a PATI request. Its precise scope in any case will depend upon the circumstances of the request and its handling. The purposes of the PATI Act in section 2 will inform the scope of the duty to assist under specific circumstances.

Assistance to make a request in a recordable format

50. Regulation 17(i) of the PATI Regulations 2014 (**PATI Regulations**) requires the ICO to assist persons who have a limited ability to read or write English or with any mental or physical limitation.

51. If the requester is having difficulty making a request in a recordable format, whether because of a disability or any other reason, the Information Officer should offer to write it down for them. In such cases, the requester should be asked to sign and return the written request to the ICO. This is clearly easier in a face-to-face situation, but can also be done by mail or email using standard letter PATI04.

52. The Information Officer should provide the requester with a copy of the request for their records.

Assistance in framing a request

53. If the requester has difficulty in stating what information they want, the Information Officer should work with them to try to frame the request and/or narrow the information down to something we can help with or which might be more useful. The Information Officer might find it helpful to refer the PATI requester to the categories of records held by the ICO, as outlined in the ICO Information Statement.

54. For example, a requester asks for all the records we hold on a particular public authority. This wide request would embrace (but not be limited to) records relating to investigations, enquiries, ICO events attended by that public authority, compliance matters, etc., and it is unlikely that the requester actually wants everything. In this instance, it would be good practice to describe the sorts of records we do hold, helping to identify the elements the requester would like to access.

Requests for information not held

55. If the record was at one time held by the ICO, but has been disposed of, this should be explained to the requester at the earliest possible opportunity. It is good practice to do this informally, preferably by phone, as this is likely to be the quickest approach for the requester. It should be made clear that this is not the ICO's formal response, but that one will be issued with the explanation in it.

Searching for records

Procedures

56. As a rule of thumb, the Information Officer should search for the responsive records before issuing an initial decision, even when they believe that the records would be exempt. This is to check whether the responsive records are held by the ICO and to make sure that the exemption is not applied in the abstract. This will allow the ICO to provide the requester with an accurate response, as required by section 12(2)(b) of the PATI Act.

57. All searches for information will be initiated by the Information Officer within five working days of receiving the PATI request. If parts of the PATI request are unclear, the Information Officer should not delay in searching for records responsive to the parts of the PATI request that are clear while seeking clarification from the requester on the remainder of the request.

58. If the Information Officer is in any doubt about search locations and who should be asked to conduct them, they should seek advice from the Information Commissioner as needed.

59. The Information Officer may delegate the task of searching to any other individual within the ICO.

60. All searches must be carried out promptly, within the timescale set by the Information Officer. The Information Officer will normally ask for searches to be completed within five working days, but this may be extended in agreement with the Information Officer if it is known the information is particularly complex or voluminous or if this deadline conflicts with other work deadlines. Any conflict or issue in relation to other priorities should be discussed with the Information Commissioner to ensure that all responsibilities are met, including reasonable searches for PATI requests.

61. Any officer required to carry out a search must respond to the Information Officer in writing, even to say no record is held.

62. Any officer required to carry out a search must document the steps they took to locate the responsive records. Documentation of the search should be provided to the Information Officer when reporting the outcome of the search.

    a. For physical records: documentation of search should include details on where searches are made (e.g., names of the files and their location, etc.)

    b. For electronic records: the search should be documented by way of a screenshot.

63. If an officer is of the view that searching for the information is likely to be extensive and may cause a substantial and unreasonable interference with or disruption of the ICO's other work, the Information Officer must be consulted immediately. The Information Officer should seek assistance from the Information Commissioner to determine if additional resources or support, or an extension of time, are available to process the PATI request.

64. The Information Officer is responsible for compiling a Search Log, which summarises all the searches conducted. The Search Log must record:

    a. where searches are made

    b. who makes them

    c. what search terms are used (if electronic), and

    d. a summary of the results.

65. The Search Log should be kept up-to-date and printed out for any hard-copy file when it is complete.

66. If the Information Officer is of the view that there would be chargeable fees they should, as appropriate, contact the requester immediately to offer assistance and seek advice from the Information Commissioner.

67. It is for the Information Officer to decide how to carry out and commission searches, following the principles of **reasonableness**. For example, if the record sought is something very specific and if it may be more efficient or effective, they may simply email the appropriate staff asking them to search their email account using specific search terms. There may be occasions where multiple searches are needed.

68. All requests to colleagues to search for information must be made by email. Every member of staff who is asked to search for information must be told:

    a. where/what system they are required to search, e.g. Outlook email, documents or shared drive folder, notebooks, paper records (Note, that if a member of staff knows that responsive records may be held in an additional location, that location should also be searched and this information shared with the Information Officer);

    b. what search terms they are required to use, if electronic;

    c. the timescale for response; and

    d. to reply to the Information Officer by email confirming either:

(i) No record is held; or

(ii) Record is held and attached.

69. The following should be attached to the response to the Information Officer:

    a. the search results if electronic,

    b. all information (or reference to the hard-copy information) that on the face of it is in scope,

    c. information located that may be in scope, but it is unclear, and

    d. if many records are held (e.g., in a case file), the Information Officer should be notified so that arrangements can be made to have it copied for the request paper file.

70. When the Information Officer is satisfied that they have all the records held, a check should be made to ensure they are all within scope, consulting with the Information Commissioner or colleagues as appropriate.

71. The Information Officer must organise the records held and in scope as follows:

    a. Sort documents into reverse chronological order (as far as possible).

    b. Delete blank or duplicate pages (as far as possible).

    c. Number the documents and, if necessary, the pages and then enter them into the Schedule of Records.

    d. Create a PDF copy of a complete set of the physical records (if applicable). A complete set of the responsive records should be saved in the appropriate PATI request folder.

    e. File a clean (i.e., unredacted) copy in the paper and/or electronic files, as appropriate.

72. If records are not held, the Information Officer must offer reasonable assistance and/or respond as set out in the section 'Responding to PATI request'.

Email threads

73. Chain emails often result in duplication of information. The Information Officer should ensure that, wherever possible, chain emails are separated into individual emails and duplicates removed. Care should be taken to keep emails together when needed.

Charging fees

74. To avoid incurring costs and charging fees to the requester, the Information Officer should disclose records in electronic form as much as possible.

75. If the requester wishes to receive records in hard-copy, the Information Officer may use their discretion on whether to charge the appropriate fees to the requester. Fees should not be charged unless absolutely necessary.

76. If the Information Officer decides to charge fees to the requester, they should refer to the Government Fees Regulations 1976 at Head 59.

Substantial and unreasonable interference

77. The Information Commissioner has issued Decision 03/2018, Department of Health, on section 16(1)(c) of the PATI Act which allows public authorities to refuse a PATI request if compliance would likely cause substantial and unreasonable interference with their other work.

78. As a reminder, in accordance with section 16(2), the ICO must assist or offer to assist the requester to amend the request in a way which will prevent a refusal under section 16(1)(c). It is a good practice to document any communication with the requester showing the ICO's assistance or offer to assist.

Assessment

Initial checks

79. The Information Officer should ensure they are confident that searches conducted were reasonable. They should also reconsider whether the request should be refused under section 16(1)(c), in line with the guidance above.

Action needed

80. The aim of the assessment part of the process is for the Information Officer to reach a conclusion on whether the records held:

    a. Are outside the applicability of the PATI Act because they fall within section 4(1)(b)(iii).

    b. Should be disclosed in full, e.g., because no exemptions apply or because the public interest requires disclosure even when qualified exemptions are engaged.

    c. Should be withheld, either in full or redacted as part of a document because exemptions apply to the records and the Information Officer has concluded that they should not be disclosed after conducting the public interest test assessment.

    d. Should not have their existence or non-existence disclosed because, if they exist or were to exist, the records would come within an exemption and disclosure of their existence or non-existence is not in the public interest (section 38).

Applying exemptions

81. The Information Commissioner has issued guidances and decisions on applying exemptions. They should be applied as appropriate to the held records.

82. If the Information Officer's view is that an entire record should be withheld, the record should be annotated to this effect, saying which exemptions apply, and the Schedule of Records updated.

83. If the Information Officer's view is that part of a record should be withheld, the record should be annotated (using the markup feature in Adobe, as applicable, at this stage), in such a way that is clear to anyone not familiar with the case, which part of the record is being withheld and under what exemption. The Information Officer should mark up a working copy of the records and ensure that a clean copy is maintained for the final marking.

84. In considering whether exemptions apply, the general advice in the next section should also be followed.

Requests for records about the Information Commissioner's reviews

85. In accordance with section 4(1)(b)(iii), the PATI Act does not apply to records that were created or obtained by the ICO in the course of carrying out its functions. A PATI request for records about the Information Commissioner's reviews must be refused under section 4(1)(b)(iii). A party to the review may request a copy of their submissions or correspondence from the ICO and it will be addressed outside of the PATI process.

Information otherwise accessible (section 16(1)(f))

86. Information publicly available on the ICO's website and social media portals can always be disclosed as published. If the Information Officer notices that the ICO's already published record needs some corrections (e.g., wrong date, known typos that impact its readability, etc.), the corrections should be informed to the requester and the appropriate ICO officer notified so the correction can be made on the published record, if possible.

Information intended for future publication (section 16(1)(d))

87. If the publication of any requested record is required by law and is intended to be effected not later than three months, the ICO will not normally disclose it until the publication date, in accordance with section 16(1)(d).

88. The intention to publish must be clear and demonstrable, not aspirational.

89. Helpful internal sources of information about the ICO's future publications are the operational plan, project plans, and colleagues. If in any doubt, speak to the Information Commissioner.

90. If the request is for records that may be included in other reports, e.g., statistical information that we may be publishing in our annual report, seek advice from the Information Commissioner.

General assessment advice

Third party notice

91. If the records held and in scope include information about third parties, the Information Officer should seek written instructions from the Information Commissioner on whether that information might fall under the exemptions in section 23, 25 or 26.

92. If the Information Commissioner has reason to believe that the information in the records might be exempt under section 23, 25 or 26, the Information Officer should prepare PATI05 – to be signed by the Information Commissioner and sent by the Information Officer.

Technical assistance required?

93. Technical advice from a subject expert, legal advice and guidance from colleagues should be sought at the earliest possible opportunity, and clear timescales set for the expected response.

94. Any request for internal advice should set out the PATI request, or a synopsis of it (if long), the issues and advice/questions that need to be addressed.

95. If the advice is likely to be required from an external source, the Information Commissioner's guidance and approval should be sought, whether or not the advice is likely to incur costs. An appropriate Memorandum of Understanding or a confidentiality agreement may need to be executed by the Information Commissioner and the external source, but this should not interfere with the decision making process on the PATI request.

Destruction of records held

96. Under section 64(1) of the PATI Act, it is a criminal offence to alter, erase, destroy or conceal any record with the intention of preventing its disclosure under the PATI Act.

97. Care must therefore be taken to secure any records covered by a PATI request against destruction. In many cases it will be appropriate to alert the Information Commissioner and/or colleagues that a PATI request has been made. The Information Commissioner should ensure that team members are alerted using the most appropriate means in the circumstances. This should be done at the earliest possible opportunity.

Responding to PATI request

General process

98. Whatever the outcome of the request, the underlying principles in responding to requests are:

a. The response should be drafted and rooted in the context of good "customer service". It should avoid unnecessary jargon. Where jargon or technical language is needed, it should be explained or the requester should be referred to other guidance which gives more information. We should seek to be helpful while responding to the letter of the law.

b. The response should be legally and technically competent.

99. The Information Officer should:

a. Draft the initial decision, ensuring it makes reference to the Schedule of Records (where appropriate) and the requester's right of review.

b. Ensure the Schedule of Records is complete. This should list the documents we are disclosing. The normal practice is to send the records with the Schedule, although this would not be appropriate if the records being disclosed are those that might be exempt under sections 23, 25, or 26. If a small number of records are being disclosed and in the Information Officer's judgment a Schedule is not appropriate, the initial decision letter must list the records enclosed so that it is clear exactly what was sent.

c. Prepare (or arrange to have prepared) the records to send the requester, including redactions where needed.

d. Ensure the paper and electronic files are up-to-date.

e. Ensure standard letters are used, and adapted as necessary, when responding to a request. **The Information Officer must never delete information about the requester's right to seek an internal review from the letters.**

f. Sign and issue the initial decision.

100. All standard letter templates have a logo header and footer so they can be sent as email attachments. If you are sending a hard-copy letter, the header and footer should be deleted before printing on headed paper.

101. The initial decision should generally be sent by the same means with which the PATI request was received, e.g., by email if the request was received by email.

102. The 'registered email' feature should be used when sending an initial decision to the requester via email. Any proof of sending and delivery should be retained in the electronic case file.

103. Covering emails must state that the requester should let us know if they have any difficulty reading the attachment, so that alternative arrangements can be made.

Records disclosed in full responses

104. Standard letter PATI06 should be completed and sent to the requester.

105. If appropriate, the records should be collated, accompanied by a Schedule of Records and, if necessary, transferred into the agreed format.

106. When responding to an email request for information which is available online, either attach the documents to the response or send the relevant links.

Disclosing records falling under sections 23, 25, and 26 exemptions

107. As a general rule, if the initial decision decides to grant access and if practicable, the Information Officer should give the requester access to the records at the same time the initial decision was issued.

108. If the records that are disclosed contain a third party's information that might be exempt under section 23, 25, or 26, the Information Officer should refrain from disclosing the records at the time the initial decision was issued. The Information Officer should instead provide a copy of the decision notice to the third party who was notified under section 39 of the PATI Act. This would give the third party the opportunity to seek an internal review.

109. When the Information Officer decides that records should be disclosed but has questions about whether a record might contain information that is exempt under section 23, 25 or 26 and whether notification to third parties is required, the Information Officer should obtain the Information Commissioner's instructions.

Records not held responses

110. The Information Officer should take into account section 3(3) of the PATI Act and relevant decisions by the Information Commissioner's in determining whether the requested records are held by the ICO.

111. If the ICO does not hold the records, the requester must be informed. The initial decision should include an explanation on the steps taken by the Information Officer in concluding that the records are not held. Use standard letter PATI07.

112. If the records were at one time held by the ICO, but are no longer, this should be explained to the requester. Where we hold evidence that a specific record or file has been destroyed, it may be helpful to provide the requester with a copy of that evidence.

Transfer of request

113. If the ICO does not hold the requested records, but is aware that they could be held by one or more other public authorities, the Information Officer should transfer the request in accordance with section 13(5) of the PATI Act. The transfer should be made:

a. To the public authority that holds the records. If there are more than one public authority holding the records, the transfer should be made to public authority who, in the Information Commissioner's opinion, has functions that are most closely related to the subject matter of the request.

b. Within five working days after receipt of the PATI request.

114. It is good practice for the Information Officer to take the following steps before transferring the request:

a. Inform the requester that the ICO does not hold the records, but the Information Officer intends to transfer the request to another public authority. The requester should be asked if they have any objection to the transfer, or if they would prefer to make a PATI request directly to the other public authority.

b. Contact the information officer of the other public authority to confirm that it holds the type of records sought by the requester.

115. The ICO can transfer a PATI request either in whole or in part. It can also separate a request into separate items or parts to send them to different public authorities.

116. The transfer requirement is not triggered if the ICO holds some of the requested records. However, in line with the duty to assist, the Information Officer should inform the requester if other public authorities might hold additional responsive records. This is to allow the requester to make an informed decision on making a separate PATI request to the other public authorities.

117. The Information Officer is responsible for sending a transfer notice to the requester and the relevant public authority. Standard letters PATI08 and PATI09 should be used in notifying the requester and the public authority of the transfer, respectively.

Neither confirm nor deny responses

118. In limited circumstances, it may be necessary to issue an initial decision notice which does not confirm the existence or non-existence of a requested record. In accordance with section 38 of the PATI Act, this can be done only if:

a. the record itself, if it exists or were to exist, is or would be an exempt record, and

b. disclosure of the existence or non-existence of the record is not in the public interest.

Withholding records/refusing to disclose responses

119. If access to a record is denied in full, the Information Officer will use PATI10 and prepare a Schedule of Records listing what is being withheld under what exemption. Bear in mind this should already be on file by this stage. If we are refusing to confirm or deny whether a record exists, the Schedule must not be sent to the requester.

120. If a record is to be withheld in part, the Information Officer will use PATI11, and a Schedule of Records listing what is being disclosed/withheld. Again, if we are refusing to confirm or deny whether a record is held, the Schedule to be sent to the requester must not make any reference to the record we are refusing to confirm we hold.

121. In the initial decision, all records withheld, including redactions, must be explained by citing the relevant exemption and why it has been applied, making reference to the schedule as appropriate. The decision should also, where relevant, explain how the public

interest test has been applied and why the conclusion has been reached that release is not in the public interest.

122. The requester should be told about their right to an internal review and asked to address any request for review to the Information Commissioner.

Formatting records

123. As noted above, as a general rule, responses should be sent by the same means that the request was made.

124. If we are disclosing a large amount of records and the request was made electronically, it may be appropriate to ask the requester if they would like to receive the records in a hard-copy format to make it easier to read, before automatically issuing it by email.

125. If there is any possibility that the requester may have problems with the format of the record, the Information Officer should check with the requester before sending the record. We will comply with their format preference where it is reasonably practical to do so (see section 17(2) of the PATI Act).

126. If the requester has specified a format because of a physical limitation, we must comply unless it would be unreasonable to do so. The burden of proof of what is reasonable lies with the ICO.

127. Similar duties are placed on the ICO in terms of provision of translated information. Translation work can be outsourced if required, after discussion with the Information Commissioner.

128. Any disputes with the requester about the format should be handled through a request for an internal review.

Tracking of responses

129. It is good practice to track responses to PATI requests to ensure that initial decisions are issued to the requester within 6 weeks.

130. Once a PATI request is received, the Information Officer should put a reminder on both their and the ICO's calendar to acknowledge the request within 5 working days and to issue an initial decision within 6 weeks.

Records management at request stage

131. The Information Officer is responsible for:

a. Ensuring the electronic and hard-copy files are in good order, complete and up-to-date, to the point the case is referred to the Information Commissioner for an internal

review. Unless it would be impractical, both must contain the response and the records that were disclosed and/or withheld.

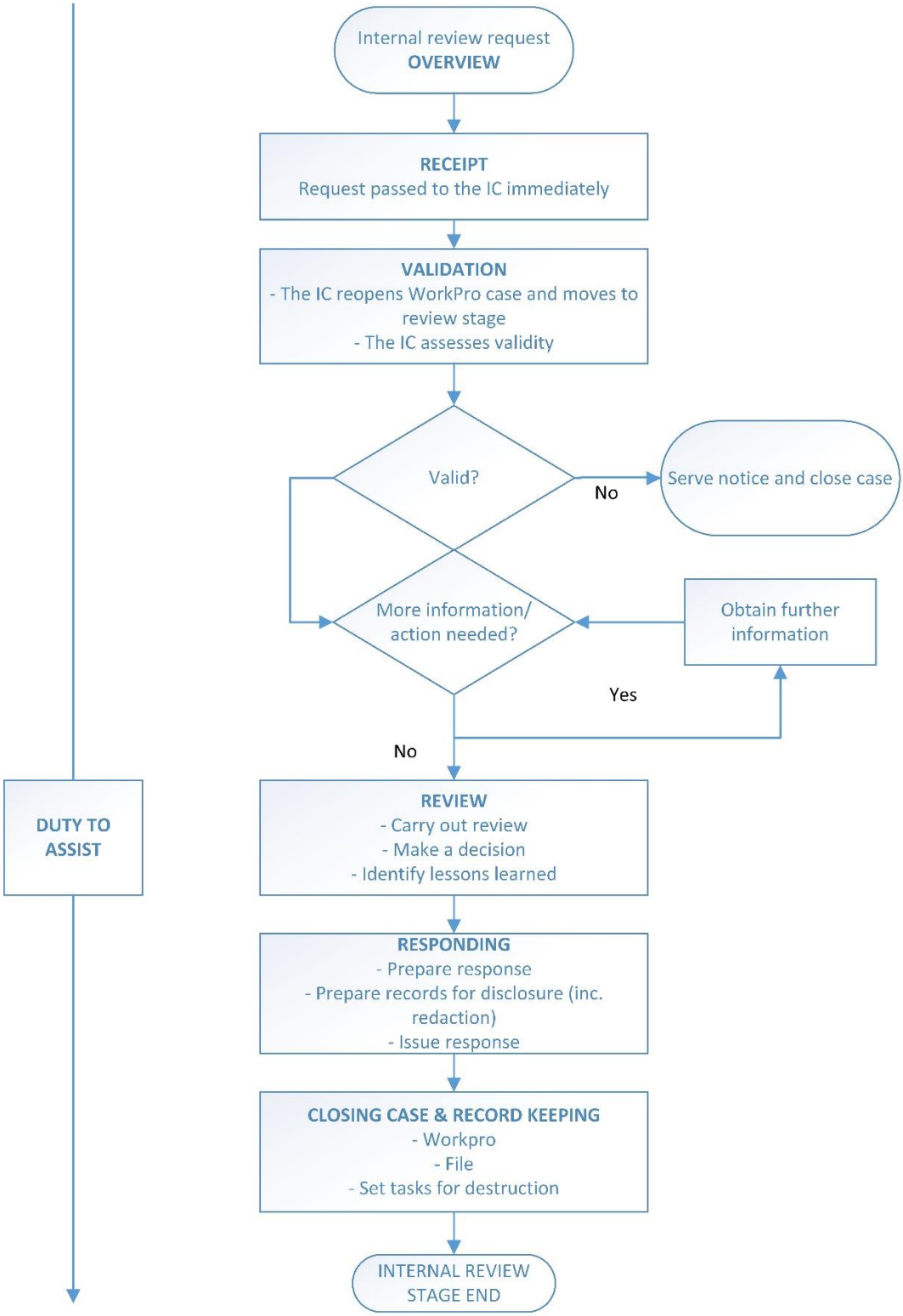
b. Ensuring the case is closed by no later than the next working day after the initial decision is sent or by the close of the last working day of the month, whichever is sooner.

c. Secure retention of the PATI request file for two years from the date of the last action on the file.

d. The subsequent destruction of the file after its retention period.

Internal review

Figure B: Overview of the internal review process



Review procedure

132. If the requester is dissatisfied with the initial decision, they have the right to ask for an internal review by the Information Commissioner as the head of the public authority (but no right of further, independent appeal). Requester should be asked to direct requests for internal review to the Information Officer and/or directly to the Information Commissioner.

133. If received by the Information Officer (or other staff members), the internal review request should be passed to the Information Commissioner immediately. The Information Commissioner will determine whether the request was valid.

134. The Information Commissioner will ensure the review request is valid, providing assistance to the requester as appropriate.

135. In accordance with sections 41 and 42 of the PATI Act, the internal review request must be:

a. made within six weeks after the date of the initial decision, or the date the initial decision was due (section 42(1) and (2) of the PATI Act). Section 42(3) of the PATI Act allows the ICO to accept a late request for an internal review. Extension will be at the Information Commissioner's discretion taking into account the circumstances at the time. Reasons must be recorded on the case file and communicated to the requester, and

b. in writing.

136. If the review is invalid and cannot be resolved through assistance, the Information Commissioner will write to the requester explaining why, and what rights the requester has, using standard letter PATI12.

137. If the request is valid, the Information Commissioner will conduct the internal review.

138. The Information Officer who issued the initial decision must:

a. Ensure the paper and electronic case files are up to date within two working days of receipt of the internal review request. The files must contain copies of:

(i) the original PATI request,

(ii) any correspondence about the request (including correspondence with the requester and any third parties),

(iii) a record of searches undertaken to find information in scope of the request,

(iv) the initial decision (including a full copy of any records released),

(v) any withheld records, and

(vi) the request for review.

b. Prepare a briefing for the Information Commissioner on the issues highlighted in the request for review within five working days of receipt.

139. The Information Commissioner as the head of public authority conducting the internal review should:

a. Acknowledge receipt using standard letter PATI13 within five working days. The internal review must be an objective assessment of the complaint and involve a thorough assessment of the handling of the request. Reviews should be undertaken and completed as quickly as possible, and in all cases will be completed within the statutory 6 weeks.

b. Review the case files and briefing provided by the Information Officer. When carrying out an internal review, the Information Commissioner must consider the status of the records and other relevant circumstances at the time of the receipt of the PATI request. However, if circumstances have changed since we received the PATI request (e.g. we now hold record which we did not hold when we received the request), the Information Commissioner may address the change in circumstances either by, in this example, disclosing the record or advising the requester to make a new request for the information.

c. According to the circumstances of the case, it may also be necessary to:

(i) perform (or arrange for) a further search for records,

(ii) read other associated case files,

(iii) contact the requester for clarification,

(iv) notify a third party and seek their views,

(v) seek legal advice on points of law,

(vi) discuss the merits of the review further with the Information Officer who issued the initial decision, and/or

(vii) call upon other staff in the ICO to assist with the review.

d. Create and maintain a record of the issues considered in the internal review and any learning points in the case file.

e. Form a view on the case. The options open to the Information Commissioner are to:

(i) confirm the original decision,

(ii) substitute a different decision, or

(iii) reach a decision (in the case of response failure to decide initial response) for the first time.

f. Prepare an internal review decision and share the findings with the Information Officer who dealt with the original PATI request.

g. If necessary, refer draft internal review decision to a staff for quality review and, if new exemptions are applied, for a technical review.

h. Issue an internal review decision to the requester.

i. Report review outcome to the ICO, sharing any learning points.

Further right of appeal

140. The internal review decision should explain that the requester has no further right of appeal under the PATI Act. It should also explain that if the requester believes that there has been administrative failure, failure to provide a service, or failure in a service provided to the point where they have suffered injustice or hardship as a result of these failures, the should be informed that they can complain about the ICO to the Office of the Ombudsman.

Right to judicial review

141. The requester should also be told about their right to seek leave for a judicial review under section 49.

Records management at internal review stage

142. The Information Commissioner as the head of public authority conducting internal reviews is responsible for:

a. Ensuring the electronic and hard-copy files are in good order, complete and up-to-date from the point the Information Officer refers the case to them.

b. Ensuring the case is closed by no later than the next working day after the response is sent or by the close of the last working day of the month, whichever is sooner.

c. Maintaining records of any further communication received or sent.

d. Passing the hard-copy file to the Information Officer for storage until either needed or destroyed in line with the Commissioner's Retention Schedule.

143. The Information Officer will ensure closed cases are appropriately filed until the contents are due to be destroyed.

Timescales and monitoring

Timescales

144. PATI and internal review requests should be dealt with promptly and in the shortest reasonable time. The aim is to make information available at the soonest possible point.

145. Section 14(1) of the PATI Act makes it clear that the 6 weeks for initial or internal review decision is a maximum and that the ICO is required to disclose records within certain timeframes, which take into account the rights of third parties. Section 15 of the PATI Act allows for the timescale to issue an initial decision to be extended, but we will

only seek to extend the time period in limited circumstances set out in section 15(1). The Information Commissioner's approval must be sought before doing that.

146. The PATI Act does not have any provision which allows an extension of time to issue an internal review decision.

147. If a response cannot be sent straight away, the Information Officer must send an acknowledgment letter within five working days. Standard letter PATI01 should be used for this.

148. The initial decision to a PATI request must be sent within 6 weeks.

149. If the response is straightforward and for full disclosure the Information Officer should aim to do this straightaway and in no more than five working days.

150. An internal review decision must be sent within 6 weeks after the date of the internal review request was received.

151. If the 6-week timeline is missed at any stage, the response should be given priority and sent out as soon as possible, even if the requester has since requested an internal review or made a complaint about service.

152. The 6-week timeline means 42 calendar days. Weekends and public holidays should not be included when calculating the timelines set by "weeks" in the PATI Act.

Monitoring

153. The ICO has a KPI to 100% comply with the statutory timeline in the PATI Act. The Information Commissioner will monitor and report against this KPI.

154. The Information Officer will report PATI and internal review requests activity in line with the ICO's governance framework, ensuring that lessons are learned and procedures and guidance remain up-to-date and fit for purpose.

155. The ICO will keep statistics about PATI requests in line with the data it request from all public authorities during the annual return process. The Information Officer is responsible for reporting the ICO statistics and submitting the annual return before the end of each calendar year (see section 58(3) of the PATI Act).

156. In accordance with section 6(2) of the PATI Act, the ICO through the Information Officer should also maintain a log of all PATI requests made, excluding the names of requesters or any other identifying information.

Document control sheet

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Summary of changes to document				
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)*