



# Compliance Enforcement Policy and Handbook

Enforcement conducted under Part 2 of the PATI Act

## Table of Contents

Introduction .....	3
Compliance enforcement procedures .....	5
More information .....	8

## Introduction

1. As part of the Information Commissioner's mandate to promote public access to information in accordance with the Public Access to Information (**PATI**) Act 2010 as well as to provide guidance to public authorities on their obligations under the PATI Act, the Information Commissioner and her staff carry out compliance enforcements in cases where a public authority is failing to meet the requirements set out in sections 5 and 6 of the PATI Act.
2. Sections 7 and 8 of the PATI Act give the Information Commissioner the power to:
  - i. provide guidance to public authorities with regard to the preparation of information statements
  - ii. review the information statement of any public authority to determine if it complies with section 5
  - iii. monitor and provide guidance to public authorities with regard to the provision of other information under section 6, and
  - iv. issue an order requiring a public authority to comply with the requirements relating to information statements and the provision of other information in sections 5 and 6.
3. The purpose of this Information Commissioner's Office (**ICO**) Compliance Enforcement Policy and Handbook (**Handbook**) is to provide guidance for the ICO staff in relation to the conduct of enforcement activities in relation to public authority's non-compliance with sections 5 and 6 of the PATI Act. This Handbook is aimed at ensuring consistency and fairness in our approach to conducting the enforcements.
4. This document and the procedures below describe how the enforcements are carried out, including:
  - i. how and on what basis decisions to enforce are made,
  - ii. how we communicate with the public authority and what we ask of them, and
  - iii. how we evaluate and report on the outcome of the enforcement.
5. 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 staff members 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 by the relevant parties.

6. Compliance enforcements can vary from simple correspondence with a public authority to the issuance of an order requiring a public authority to take particular remedial action. The level of enforcement depends on:
  - i. whether the failure to comply is deemed minor or more significant,
  - ii. whether the failure to comply is relatively short-term or recurring, and
  - iii. whether the causes can be easily rectified or are more systemic.
7. The primary intention of compliance enforcement is not to penalise public authorities for poor practice, but to support them in complying with the requirements under sections 5 and 6 of the PATI Act. However, when a public authority continues to fail to bring themselves into compliance, despite being given a reasonable opportunity and assistance by the ICO to do so, the Information Commissioner has the power to issue an order requiring the public authority to take steps to meet the requirements. The Information Commissioner's order is legally binding and has the effect of an order of the Supreme Court.
8. We will publish information periodically about the compliance enforcements we undertake. Once an enforcement is closed, we will ensure appropriate learning points are made available for other public authorities to benefit from, where possible.
9. Current funding and personnel levels do not include specific allocations for compliance enforcement activity, and as a result all enforcements are conducted within and using existing available resources. Our capacity to carry out enforcement actions may therefore fluctuate depending on resource availability and the volume of applications we receive for an independent review by the Information Commissioner under Part 6 of the PATI Act.

## Compliance enforcement procedures

### *Initiating a compliance enforcement*

10. A compliance enforcement may be initiated following:
  - i. the ICO's Annual Return process,
  - ii. the Information Commissioner's review of a public authority's information statement under section 7(1)(b) of the PATI Act, or
  - iii. the ICO being made aware (through the Information Commissioner's reviews under Part 6 of the PATI Act or contact from a third party) of a public authority's failure to meet any of the obligations in section 5 or 6 of the PATI Act.
11. Any staff member of the ICO who are aware of a public authority's alleged failure to comply with the requirements in section 5 or 6 of the PATI Act should bring the alleged failure to the Information Commissioner's attention.
12. The Information Commissioner will decide whether a compliance enforcement should be initiated, taking into account the following factors:
  - i. nature of the public authority's non-compliance,
  - ii. non-compliance impact on the public's right to access information, and
  - iii. the office's capacity to carry out enforcement actions.
13. The Information Commissioner may require a staff member to conduct initial inquiries to obtain sufficient factual evidence before deciding to initiate a compliance enforcement.
14. The Information Commissioner will assign a compliance enforcement to a staff member, who will be responsible for creating, managing and closing the file, communicating with the relevant parties and making recommendations when appropriate.

### *Enforcement Plan*

15. If the Information Commissioner decides to initiate a compliance enforcement, the assigned staff member will prepare an Enforcement Plan which:
  - i. identifies the relevant public authority
  - ii. identifies the relevant provision in section 5 or 6 which the assigned staff member believes to have been breached by the public authority
  - iii. explains why the assigned staff member is of the view that the public authority has failed to comply with the identified provision, supported by relevant facts, evidence or case law

- iv. sets out the steps that the public authority has to take to bring itself into compliance
- v. sets out the timeline for the compliance enforcement, which includes target dates for notifying and inviting submission from the public authority as well as a proposed timeline for the public authority to bring itself into compliance.

16. Any Enforcement Plan should be submitted to and approved by the Information Commissioner.

### *Notifying and inviting submission from the relevant public authority*

17. Within 5 working days of the Information Commissioner's approval of the Enforcement Plan, the assigned staff member should issue a letter notifying the public authority of the compliance enforcement. The letter should:

- i. clearly explain the failure, or alleged failure, of the public authority to comply with any of the requirements set out in section 5 or 6 of the PATI Act, referring to the relevant provision
- ii. provide details of the steps that the public authority has to take to comply with the identified requirements
- iii. invite the public authority to make submissions on the failure, or alleged failure, to comply with the identified requirements
- iv. provide or propose a reasonable timeline for the public authority to comply with the identified requirements. See paragraphs 21-23 for further details.
- v. where applicable, provide options and information on available resources which might assist the public authority with complying with the identified requirements, and
- vi. inform the public authority that continued failure to comply with the identified requirements might result in an Enforcement Decision and Order by the Information Commissioner.

18. The letter should be sent via RPost and saved in the relevant shared folder.

19. The public authority should be given ten working days to make submissions. Discretion is afforded to the assigned staff member to extend this period to fifteen working days, if it is reasonable to do so.

20. If the public authority fails to make submissions within ten working days, the assigned staff member should send a follow up letter noting that no submissions have been received. The follow up letter should advise the public authority that, unless submissions are made within five working days, the matter will be escalated to the Information Commissioner, who may issue an Enforcement Decision and Order.

### *Timeline for public authorities to comply*

21. The assigned staff member must first obtain the Deputy Information Commissioner's approval prior to providing or proposing the steps and timeline to comply with the identified requirements in the notice letter.
22. Non-compliance with the requirements in section 5 or 6 of the PATI Act might be as simple as a public authority's failure to update its information statement. But it could also involve a more complex issue which might require both the public authority and the ICO's additional time and resources before the public authority can bring itself into compliance. As such, when proposing or determining the timeline set out or proposed in the notice letter, both the assigned staff member and the Deputy Information Commissioner must take into account various factors, such as whether the non-compliance can be easily rectified or must be urgently rectified.
23. The assigned staff member may extend the timeline for public authorities to bring itself into compliance, subject to the Deputy Information Commissioner's approval.

### *Enforcement Recommendation*

24. In the event a public authority continues to fail to bring itself into compliance within the set timeline, the assigned staff member must, within 10 working days after a response from the public authority is due, submit an Enforcement Recommendation to the Information Commissioner for her approval. The Enforcement Recommendation must:
  - i. summarises the public authority's failure, or alleged failure, to comply with any the relevant requirement in section 5 or 6;
  - ii. explains the steps that have been taken by the assigned staff member as part of the compliance enforcement;
  - iii. summarises any correspondence with the relevant public authority and any steps that have been taken by the public authority to comply with the relevant requirement;
  - iv. provide recommendation on the next steps; and
  - v. attach the approved Enforcement Plan.

### *Information Commissioner's Enforcement Decision and Order*

25. The Information Commissioner may issue an Enforcement Decision and Order against the head of authority of the relevant public authority if, following the submission of an Enforcement Recommendation, the Information Commissioner is satisfied that the relevant public authority: (i) fails or continues to fail to meet any of the requirements in section 5 or 6 and (ii) is unwilling to meet the relevant requirements.

26. A copy of the Information Commissioner's Enforcement Decisions and Orders should be sent to the relevant public authority and filed with the Registrar of the Supreme Court via RPost on the day of issuance. They must be saved in the relevant shared folder.
27. Once an Enforcement Decision and Order are issued, the assigned staff member must provide a copy to the Project Officer as well as relevant details for uploading on the ICO website. The Project Officer will publish the decision on the website, not less than five working days following date of issue (unless a separate timescale has been agreed).

### *Checking compliance and closing the case*

28. The assigned staff member will check compliance with the public authority at the appropriate time, unless confirmation has been received prior to this.
29. The purpose of compliance enforcement is to ensure that public authorities are meeting their obligations under sections 5 and 6 of the PATI Act. With this in mind, the ICO should be prepared to continue assisting public authorities with meeting the relevant obligations even after an Enforcement Decision and Order is issued, if it is shown that the public authority is willing to bring itself into compliance.
30. If compliance is confirmed, the assigned staff member will issue a letter to the public authority confirming its compliance with the relevant obligation under the PATI Act. The assigned staff member should close the case file seven months after the date that compliance is confirmed.
31. If compliance is not confirmed and judicial review has not been sought, the assigned staff member must notify the Information Commissioner to discuss the next steps. The Information Commissioner may:
  - i. instruct the assigned staff member to issue further correspondence, for example, to remind the public authority that an Enforcement Decision and Order have been issued against them and that failure to meet the requirements of the Enforcement Decision and Order may lead to judicial enforcement; and
  - ii. where appropriate, discuss the matter with the ICO's legal counsel and instruct them to initiate judicial enforcement proceedings.
32. If judicial review is sought, the assigned staff member must immediately notify the Information Commissioner, who will seek advice from the ICO's legal counsel.

## **More information**

33. The Information Commissioner's Guidances and additional resources are available on our website, [ico.bm](http://ico.bm). Hardcopies of these resources are available on request.



34. If you need any more information about this Handbook or have an inquiry about any other general aspect of the PATI Act, or public access to information, please contact us:



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