Summary Procedure

‘Failure to decide’ (FTD) reviews (section 45(1)(b))

March 2026

Policy

1. The Information Commissioner's Office[1] (ICO) has revised our procedure for conducting external reviews where a valid application is made under section 45(1)(b) of the Public Access to Information Act 2010 (PATI Act). We refer to these applications as 'failure to decide' or 'FTD' reviews.

2. These FTD reviews will follow a summary procedure which streamlines the review process to complete an expedited decision, effective March 2026.

3. The purpose for a summary procedure is to prevent the review process from needlessly delaying the applicant from receiving an overdue internal review decision, which may include gaining access to requested records. It also achieves greater operational efficiencies, without sacrificing procedural fairness.

4. Applications made under section 45(1)(b) of the PATI Act are those where the applicant has asked the Information Commissioner to review the failure of a head of public authority to complete the requirements of an internal review under section 43 within the six-week statutory timeframe.

5. During FTD reviews, the focus is narrow. The Information Commissioner, or delegated officer, will determine as fact the date of a valid request for internal review, the date of the six-week deadline to complete the internal review, and whether an internal review decision was issued.

6. They will also determine if the head of public authority fully complied with the section 43(2) requirements, which set out what an internal review decision must contain. Broader legal issues, such as the disclosability of records, are not considered. This removes the need for detailed investigations or lengthy legal submissions.

7. Our policy is that resolution of FTD reviews, under section 46, is not appropriate. This is to encourage public accountability for public authorities that have not met their basic PATI responsibility to respond to a request within the statutory timeframe. All valid applications for an FTD review will proceed under section 47(1) of the PATI Act and result in a published, legally binding decision.

8. The Information Commissioner may delegate the conduct of FTD reviews, along with resultant decisions and orders, to any of his officers by using delegation powers under section 52A of the PATI Act. The delegated officer will also have discretion to accept late applications for review under section 45(2). Parties will be notified whenever the Commissioner has delegated any of his functions.

[1] The ICO's official name is the Office of Information Commissioner.

9. Officers exercising delegated authority to conduct FTD reviews remain under the overall supervision and direction of the Information Commissioner and must follow all internal policies, procedures, conditions or restrictions set by the Commissioner. Quality assurance occurs through management oversight and use of the ICO's case management system.

10. This summary procedure may be revised or withdrawn by notice given to the parties. This may occur, for example, if during an FTD review more complex legal submissions arise beyond the standard factual submissions about whether the public authority met its section 43 obligations.

Procedure

11. Applicants must apply to the ICO within six weeks after the date when the internal review decision was due to be made. The ICO may accept a late application for external review under section 45(2) of the PATI Act, if it is reasonable in the circumstances.

12. The ICO will follow these procedural steps for FTD reviews. (A flowchart is on page 5.)

    a. Acknowledge receipt of the application for external review, within three working days.

    b. Send notice letters that an FTD review has opened to the applicant and the public authority, within five working days. (An invalid notice will be sent to the applicant if there is a lawful reason why the Commissioner cannot commence a review.)

    c. Issue a decision on the review and, if relevant, an order.

13. The notice letters to the parties provide each party with a reasonable opportunity to make representations, as required by section 47(4).

14. Applicants are reminded of their right to make representations, but this is not usually required for the ICO to reach a decision.

15. The notice letter to the public authority will invite the authority to explain whether it conducted an internal review, as required by section 43. Representations from the public authority are requested in the form of answers to our standard questions (on page 4).

16. The notice letter to the public authority will further encourage the head of public authority to address any outstanding requirements of section 43 without delay—namely, issuing the overdue internal review decision to the applicant.

17. Public authorities will have five working days to respond to the ICO's standard questions, including submitting any evidence of corrective action taken. Requests for more time to respond may be approved in extenuating circumstances.

18. The review will move to a decision, issued under section 47(6), once the notice letter's deadline has passed. The decision will make a finding on whether the public authority

satisfied each requirement for an internal review set by section 43. It will also acknowledge any corrective efforts taken by the public authority during the review.

19. Relevant details from the public authority's representations will appear in the published decision. If the authority considers that any part of its representations should not be shared, the authority should inform the ICO during the review and explain its reasons. While the authority's view will be considered, the Information Commissioner's, or delegated officer's, discretion applies.

20. Any remaining noncompliance with section 43 at the time of issuing the FTD review decision will result in an order made under section 48(1)(b). The order will require the public authority's compliance with its section 43 obligations within ten working days of the decision, per section 48(2).

21. The public authority may avoid an order by showing that sufficient corrective steps are taken by the deadline set in our notice letter.

22. Failure to comply on time with an order will result in immediate steps for judicial enforcement, under section 48(3). We will inform the public, when publishing the FTD review decision, if the public authority complied with the order on time.

23. Once the public authority has notified the applicant of its internal review decision, the applicant has six weeks to make a new application for the ICO's external review of that internal review decision, under section 45(1)(a).

Standard questions

24. During FTD reviews, the ICO will pose the following standard questions to public authorities.

Q1: Is it accepted that the Public Authority received a valid request for an internal review from the Applicant about their PATI request? If not, please explain.

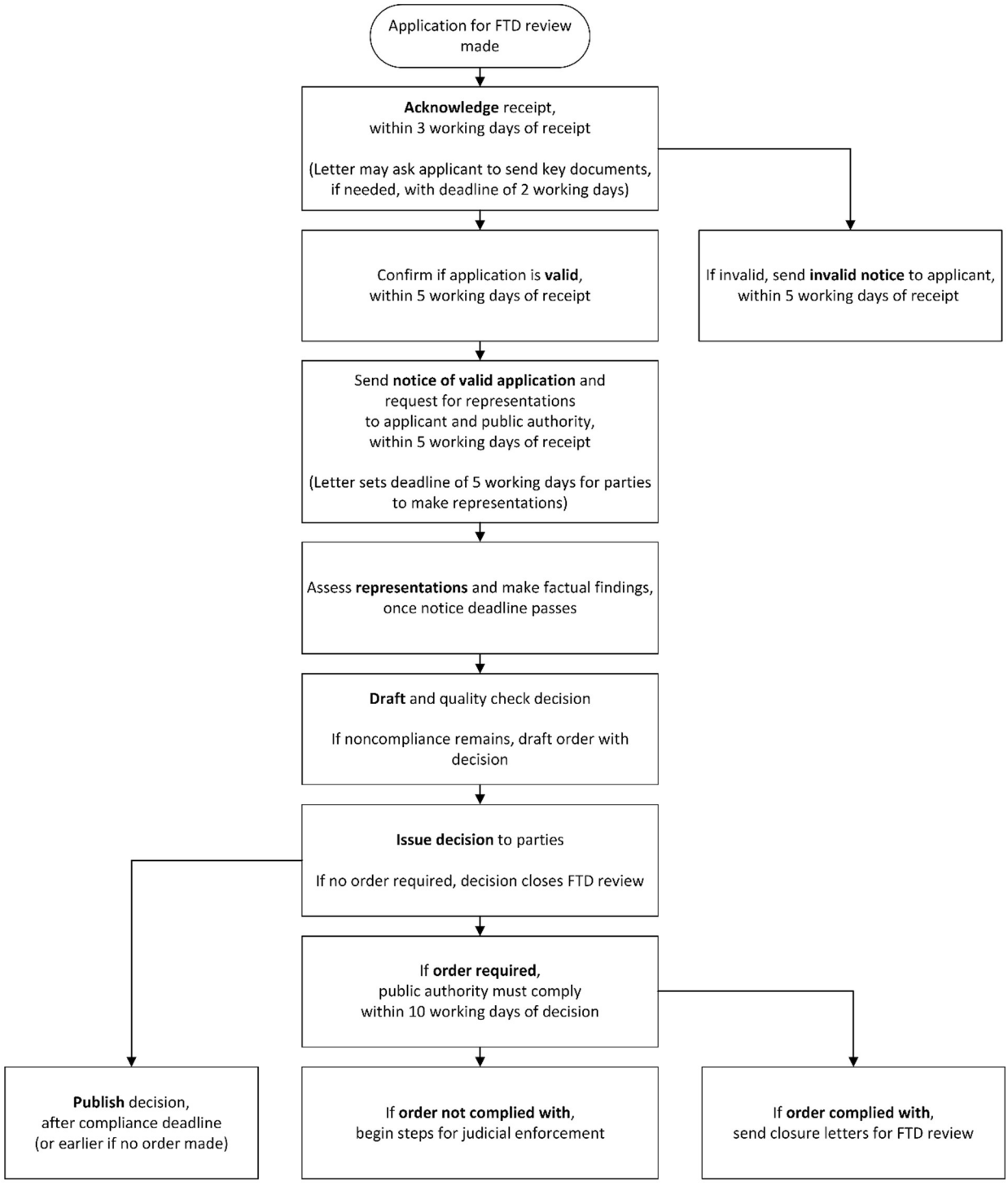
Q2: As the Head of Public Authority, do you accept that you were required to satisfy all statutory obligations in section 43 of the PATI Act within six weeks of the Applicant's request for an internal review? If not, please explain.

Q3: Please describe all steps taken to satisfy the statutory obligations set out in section 43(2) of the PATI Act within the statutory timeframe, including to:

a. complete an internal review,

b. make a decision on the review,

c. notify the applicant of the (i) decision and (ii) reasons for the decision, and, if relevant, notify any third party concerned of the same, and

d. notify the applicant (and any third party concerned) of their right to apply for an external review by the Information Commissioner about the internal review decision.

Flowchart: 'Failure to decide' (FTD) reviews