

PUBLIC ACCESS TO INFORMATION:

ADMINISTRATIVE CODE OF PRACTICE FOR PUBLIC AUTHORITIES

The Cabinet Office
January 2020



GOVERNMENT OF BERMUDA

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AUTHORITIES**

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and designed by the Department of Communications.

The Information Commissioner has been consulted.

Suggestions for future edits and comments should be directed
to the Cabinet Office Policy and Strategy Section.

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A. INTRODUCTION

Every person who is a Bermudian or resident of Bermuda has a right to be given access to any record that is held by a public authority, except those records that are exempt s.12(1).

1. AUTHORITY

1.1 This Code of Practice is established under section 60(1) of the Public Access to Information Act 2010. It provides Public Authorities with information and guidance for compliance with the administrative components required by the Public Access to Information Act 2010 (the Act) and the Public Access to Information Regulations 2014 (the Regulations). This Code serves as a practical guide to achieving the standards required by the Act and the Regulations. It does this by articulating (1) the responsibilities of key persons and agencies and (2) the process for administration of requests in compliance with the Act.

1.2 While the Code does not have legislative effect, it is derived from and aligns with the legislation. Public Authorities are advised to follow this guide in conjunction with the Act and Regulations to promote the effective administration of requests and ensure compliance.

2. CONTEXT

2.1 A modern democracy relies on accurate information and analysis in order to inform the public, such as organisations, companies and the media, about governments' activities and operations, including how decisions are made. Worldwide, governments are adopting good governance practices, including a statutory right to access government-held information. For Bermuda, Public Access to Information (PATI) was first envisioned in 2003, articulated in the Sustainable Development Plan 2008, legislated in 2010 and implemented April 1, 2015. This signifies a positive shift towards greater accountability, openness and transparency.

2.2 The Act facilitates the legal right of the public to access public records. It provides the right to any Bermudian or Bermuda resident to see the records held by Government entities about their structure, operations and decisions. The Government entities to which the Act applies are referred to as "Public Authorities." They are listed in the Schedule to the Act.

2.3 In accordance with the Act, the Information Commissioner has been consulted on the establishment of these Codes.

3. PURPOSE OF THE ACT

3.1 The purpose of the Act, s.2, is to:

1. give the public the right to obtain access to information held by Public Authorities to the greatest extent possible, subject to exceptions that are in the public interest or for the protection of the rights of others;
2. increase transparency and eliminate unnecessary secrecy, with regard to information held by Public Authorities;
3. increase the accountability of Public Authorities;
4. inform the public about the activities of Public Authorities, including the manner in which they make decisions; and
5. have more information placed in the public domain as a matter of routine.

3.2 It is against this background that Public Authorities are charged with the responsibility for handling requests for records made by the public. As a public right enshrined in legislation, this responsibility should be considered a core function of the work of Public Authorities.

3.3 Public Authorities are required to make every reasonable effort to assist persons in connection with requests, and respond to requests completely, accurately and in a timely manner (s.12(2)). This Code provides guidance on good practice to Public Authorities for the discharge of their functions under the Act and the Regulations and it supports the successful administration for compliance in key areas.

4. PURPOSE OF THIS CODE

4.1 The purpose of this Code is to:

1. provide standards of best practice for administration of the Act;
2. provide guidance on the obligations and responsibilities of Public Authorities to enhance their knowledge and expertise for compliance;
3. articulate the process for responding to requests; and
4. enable, to the greatest extent possible, consistency of approach by Public Authorities in responding to requests.

4.2 This Code is considered a dynamic document, requiring regular reviews and updates. Periodically, the Information Commissioner provides guidance documents on select areas from the Act for Public Authorities. It is important to ensure that the guidance contained in this Code is applied in conjunction with the Information Commissioner's Guidance as it relates to the obligations imposed on Public Authorities under the Act. The Commissioner's Decisions/Orders and jurisprudence also inform the practical application of the Act. These are important tools in the successful implementation of the Act, management of PATI requests and the administration of the PATI system. This Code may be used to support those undertaking training and, subsequently, dealing with requests.

4.3 The Code contains good practice to supplement the statutory provisions of the Act. The Information Commissioner has provided consultation and will promote adherence to the Code. If a public authority fails to comply with the Code, it may be failing to fulfill its obligations under the Act. The Information Commissioner has a range of powers to address these failures.

5. RECORDS AND APPLICATION

5.1 In general, the public has a right to access the records held by a Public Authority.

5.2 Section 3 of the Act defines a record as any form or medium in which information is held. Such forms may include, but not be limited to, information recorded in print or on tape or film or by electronic means or otherwise, and any map, diagram, photograph, film, microfilm, videotape, sound recording, or machine-readable record produced by means of equipment or a program. In other words, if the information requested is held by a Public Authority, in any form, it constitutes a record and can be made available under the Act.

5.3 When the Act refers to a record, it may denote the whole record or any part of a record. A reference to a record that is held by a Public Authority includes a record that is in the possession or custody of, or is under the control of, that Authority.

5.4 Any record that relates to a contract and is held by an independent contractor engaged by a Public Authority is deemed to be a record held by that Public Authority. As a result, the contractor shall, if requested by the Public Authority, give a record to that Public Authority.

5.5 The Act does not apply to:

1. records relating to the judicial or quasi-judicial functions by any court, tribunal or other body or person; or

2. records obtained or created by any of the following Public Authorities in the course of carrying out their functions:
 - a. the Office of the Auditor General;
 - b. the Human Rights Commission;
 - c. the Office of the Information Commissioner;
 - d. the Office of the Ombudsman;
 - e. the Department of Public Prosecutions;
 - f. the Attorney General's Chambers;
 - g. the Department of Internal Audit.
 - h. the Financial Policy Council

Records relating to the general administration of the above Authorities, courts tribunals or other bodies or person are not exempt from disclosure.

6. THOSE INVOLVED WITH PATI REQUESTS

6.1 There are several groups and individuals with varying relationships and responsibilities with regard to the operationalization of the Act. The individuals are listed below:

6.2 Requester s.3(1)

A requester is a person who makes a request to access a record or a person who makes a request to amend personal information contained in a record held by a public authority. This person is also referred to as 'applicant' in the PATI Regulations 2014.

6.3 Third party s.3(1)

A third party is any person (other than the requester or the public authority) who gave information in the record to a public authority in confidence, or any person to whom information in the record relates.

6.4 Information Officer s.62

Every Public Authority is required to designate an Information Officer. This individual is the person to whom requests are directed. For the purpose of the Act, it includes anyone authorized to act as an Information Officer (reg.2). Although an Information Officer remains accountable for his or her responsibilities under the Act, he or she is also empowered to delegate any of those functions for necessity or expedience, in accordance with Regulation 18. This could include other Officers within the Public Authority, in-house counsel, outside legal advice, technical consultants,

etc. Regulation 19 allows for the sharing of an Information Officer between Public Authorities. This may be the case in smaller Public Authorities, such as boards and committees, that have few or no dedicated staff.

6.5 Officers, Employees and Agents of Public Authorities

All officers, employees and agents of a public authority have a responsibility to support and promote their Public Authority's compliance with the Act. This includes, for example, responding to an Information Officer's requirements during a search for records, providing access to records requested by the Information Officer, or ensuring that a PATI request is directed to the Information Officer in a timely manner.

6.6 Public Authority s.3(1)

A Public Authority, as listed in column 1 of the Schedule of the Act, includes, but is not limited to, every government department, non-Ministry departments, entities established by statutory provision carrying out functions of a governmental or quasi-governmental nature, entities owned or controlled by the Government or substantially funded by monies authorized by the Legislature, the Corporations, the Parish Councils.

6.7 Head of the Public Authority s.3(1)

The Head of a Public Authority, listed in column 2 of the Schedule of the Act opposite that Public Authority, includes Permanent Secretaries, Chairpersons, Chief Executive Officers and the equivalent. This Head, along with the support of the Executive Team and Senior Management of the Public Authority where required, should evaluate and address the Public Authority's ability to meet its requirements under the Act. This may include ensuring adequate training, resources and support for Information Officers, or improving records management systems.

6.8 Minister s.3(1)

The Minister is the Minister responsible for the PATI legislation.

6.9 Policy and Strategy Section (PSS)

The Policy and Strategy Section within the Cabinet Office has been delegated the responsibility for the administration of the internal system of management to facilitate compliance with the Act. The PSS assists with the discharge of the Minister's duties to ensure that appropriate measures are taken by Public Authorities for the purpose of compliance with the Act. PSS is available to Public Authorities to assist with issues regarding requests and the administration of the PATI system.

6.10 Information Commissioner s.3(1)

The Information Commissioner is the person appointed by the Governor to this public office in accordance with section 50. The Information Commissioner cannot be directed in the exercise of her duties by any other person or authority, including the Governor. The mandate of the office, outlined in Section 51, includes the promotion of public access to information and provision of guidance to Public Authorities with regard to the obligations imposed on them under the Act. The Information Commissioner also conducts reviews, investigations and other specific functions assigned by the Act.

7. REQUESTER CONFIDENTIALITY

7.1 One element of the underpinning philosophy of the PATI legislation is that requests are made in confidence. It is imperative for all involved to understand and comply with the following statutory items:

1. The identity of a requester must be kept confidential. The identity may not be disclosed to any person other than a person who is required to deal with the request unless the requester gives permission in writing (s.12(4)).
2. A requester is not required to provide any reason for making a request (s.12(3)) or detail their plans for the information requested. The decision to release information should not be based on the motivation of the requester. Rather, it should be based on the right of the public to access information. Clarity regarding the specifics of the information being sought can be discussed with the requester in order to ensure an appropriate response.

7.2 While the requester's Bermudian status or residency must be confirmed if any doubt arises, every effort must be made to secure the confidentiality of the requester and to safeguard the requester's identity throughout the process.

7.3 Compliance with the statutory obligations may require operational structures and processes be adopted within Public Authorities. The Information Commissioner has recommended Public Authorities implement the following practices, which can be adopted where applicable:

1. ensure and document staff training on the duty of confidentiality;
2. ensure adequate training and compliant procedures for receipt, acknowledgement, and transfer of requests;
3. incorporate PATI duty of confidentiality into existing written governing documents;
4. adopt written practices to guide managing a PATI requester's visit to your office;
5. adopt written practices to safeguard the requester's identifying information contained in communications with the Authority, including the original request;
6. adopt written practices to guide managing the relationship between PATI requests and parliamentary questions;
7. adopt written procedures to guide mitigating the harm in the event of a breach of confidentiality; and
8. adopt written procedures to properly store, dispose of, destroy, or delete records containing the requester's identifying information.

7.4 These recommendations should be adapted by Heads to suit the operations of the Public Authority while ensuring adherence to the principle and practice of confidentiality.

8. PROTECTION AGAINST LIABILITY AND OFFENCES

8.1 The roles within PATI can be daunting. The fear of releasing information that has not been released before or is subject to an exemption, paired with the unknown implications of such release, can create anxiety for those involved. The Act however provides protections against liability. The Act is clear: "No proceedings, civil or criminal, shall be brought against any Public Authority, its employees or agents in respect of the disclosure or non-disclosure by any of them of any record under this Act, or any action taken or omitted to be taken under this Act, unless it is shown that the Authority, employee or agent acted in bad faith" (s.63). Simply said, if an individual acts in good faith administering their duties under PATI they are protected from liability.

8.2 Identified in the Act are three provisions addressing offences, with penalties if convicted.

1. Anyone who knowingly breaches any provision of the Act or its regulations is guilty of an offence and is liable on summary conviction to a fine of \$5,000 or imprisonment for six months or to both fine and imprisonment (s.65). However, no criminal or civil proceedings shall be brought against an employee of a Public Authority for anything done, reported or said in good faith in the exercise of a duty or function of their employment with the public authority (s.65).

2. Anyone who alters, erases, destroys or conceals any record with the intention of preventing its disclosure under the Act commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or to both fine and imprisonment (s.64). However, no criminal or civil proceedings shall be brought against an employee of a Public Authority for anything done, reported or said in good faith in the exercise of a duty or function of their employment with the public authority (s.65).
3. In conducting a review, the Commissioner has a number of powers under Section 56 (see *The Review Process*). Anyone who fails or refuses to comply with a requirement of the Information Commissioner or who hinders or obstructs the Commissioner in the performance of her functions 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.

B. RESPONSIBILITIES

Public Authorities shall make every reasonable effort to assist persons in connection with requests, and to respond to requests completely, accurately and in a timely manner s.12(2).

9. RESPONSIBILITIES OF EACH PUBLIC AUTHORITY

9.1 **The administration of PATI** has become a core function of Public Authorities, with the goal of ensuring transparency and accountability in Public Authority operations and decision-making. It is therefore essential that a strong framework is established within each Public Authority to support the successful operationalisation of PATI. Effective structures will help reduce the administrative burden. It is the responsibility of each Public Authority to ensure that all members understand and adhere to the PATI Act, including handling a request, assisting with a search, managing records appropriately and maintaining a requester's confidentiality.

9.2 **Records management** is a core business function for Public Authorities. It involves establishing a framework of policy and procedures to systematically control records from creation to disposal. It requires the development and implementation of policies and procedures, identification and resourcing of responsibilities, training of staff and programme monitoring. Records management provides the Public Authority with clearly established standards and guidelines that dictate how records should be created, received, maintained, used, and disposed of when they are no longer needed.

9.3 **Organized records management** enables Public Authorities to provide timely, reliable access to records and information. This should assist in facilitating the task of searching for records in order to respond to PATI requests. Maintenance of accurate and complete records enables convenient and timely access and contributes to increased transparency and accountability.

9.4 **Effective procedures, systems and resources** should be developed and implemented to ensure effective records management, (see some suggestions under the section [Requester Confidentiality](#) in this Code). Failures or inadequacies in the practices and procedures of Public Authorities can be investigated by the Information Commissioner where they relate to compliance with the provisions of the Act (s.57).

9.5 In instances where a Public Authority has engaged an **independent contractor** for the provision of goods, services or works for the Government, the contract is considered a record held by that Authority and may be subject to disclosure under the Act. Records relating to contracts that are held by an independent contractor are also deemed to be records held by that Public Authority. As a result, the contractor shall, if requested by the Public Authority, provide the records (s.3(4)).

9.6 The Act identifies a number of components where responsibility resides with the Public Authority, *see 9.7-9.12* in this Code. It is therefore incumbent upon the Head of the Public Authority, with the support of the Authority's Executive or Management team to **ensure compliance with and discharge of these statutory responsibilities**.

9.7 Every Public Authority must **designate one of its officers to be the Information Officer**. It should be noted that the Information Officer is responsible for making decisions; therefore careful thought should be given when selecting someone to fulfill this role. For many, but not all, of the functions identified, the Information Officer plays a critical role in the practical implementation of the legislation to fulfil requests for information.

9.8 The Act requires Public Authorities to **publish information on the organisation's functions and activities along with expenditures and decisions** (s.5 and s.6). Dissemination should include proactive publication of information of interest as well as the prescribed information statement and other information. If information is proactively published, it eliminates the need for a Public Authority to go through the PATI process. See the section in this Code on [Publication of Information](#).

9.9 Part 3 of the Act assigns certain responsibilities to Public Authorities in responding to requests for information under this PATI regime. Such responses include:

1. Notifications:
 - a. Acknowledging receipt of a request;
 - b. Transferring the request if the records requested are not held by the Authority but are held by another authority;
 - c. Providing the decision and reasons for it to the requester; and
 - d. Notifying relevant third parties of the intent to disclose particular records.
2. Decision to grant or refuse, whole or in part, a request for access to records

The Act promotes the full grant of access to records, except in select circumstances. The Public Authority may therefore decide one of the following outcomes:

- a. Grant full access to all information requested or relevant to the request.
 - b. Grant access in part to some of the records requested or to sections of information from a record.
 - c. Refuse to grant a request on administrative grounds (s.16) or because the record is exempt (s.21-s.40) from disclosure or because the Act does not apply (s.4).
3. Decision to grant or deny a request to Amend personal information in a record held by a public authority s.19
- Upon request from a relevant individual, a Public Authority must amend personal information in a record held by the Public Authority where the personal information is incomplete, incorrect or misleading. See section 23 in this Code on [Personal Information](#).

9.10 A Public Authority may be required to **conduct internal reviews**. A requester or a third party has a right to a review of any decision made or action not taken by the Authority with respect to a PATI request (s.41). This is referred to as an internal review. The requester must make a written request for a review. The review is conducted by the Head of the Public Authority unless the Head made the initial decision. In such a case, the request for an internal review is referred directly to the Information Commissioner. See section 26 in this Code on [The Review Process](#).

9.11 Every Public Authority shall, before the end of each calendar year, **provide a written report to the Commissioner** (s.58) containing the information on the number of PATI requests, decisions made and reviews conducted as it pertains to that Public Authority. This information enables the Information Commissioner to prepare the annual report on the operation of the Act and to lay it before each House of the Legislature. See section 25 in this Code on [Tracking System](#).

9.12 The Public Authority is **obligated to comply with decisions of the Information Commissioner** or seek judicial review if it does not intend to comply. The Commissioner has specific powers and can make binding decisions, at times requiring action on the part of a Public Authority.

10. RESPONSIBILITIES OF THE INFORMATION OFFICER

Every public authority shall designate one of its officers to be the person to whom requests under the Act may be directed s.62.

10.1 Designation by each Public Authority of an officer to fill the role of Information Officer is crucial to the successful management of requests by Public Authorities for compliance with the Act. The primary role of the Information Officer is processing and making decisions on PATI requests. Every reasonable effort must be made to assist requesters throughout the process.

10.2 It is recommended that an appropriately trained secondary Information Officer is in place within a Public Authority to ensure coverage should the designated Officer not be available and to assist with processing requests as needed.

10.3 Information Officers may delegate tasks and may require administrative or other support to fulfill the functions below. While the Information Officer remains responsible for ensuring the statutory requirements are satisfied, this does not mean that the Information Officer must personally complete every function. All references below to 'Information Officer' should be understood to mean the Information Officer or delegate.

10.4 Public Authorities may also share Information Officers. This may assist smaller or similar public authorities with meeting their requirements under the PATI Act.

Functions

10.5 There are a number of operational functions in the Act and Regulations ascribed to the Information Officer. These, along with best practice recommendations, are included in the list below. Collectively, they ensure appropriate management and response to PATI requests to enable the Public Authority to fulfill its statutory obligations. They are as follows:

1. Start immediately and adhere to timelines

As soon as a request for information is received the process of responding should begin. There are timelines to adhere to and it is best not to leave the work required until the last moment. There are several steps that can take more time than anticipated, such as accessing records, examining records, applying the public interest test, and notifying third parties.

2. Ensure requester is a Bermudian or resident of Bermuda

The Information Officer must be satisfied that the PATI requester is a Bermudian or resident of Bermuda (s.12). If there is doubt, the requester can prove their identity as a Bermudian or a resident of Bermuda by presenting a valid passport, valid driver's license or current local bill in their name.

Persons who are applying for access to their personal information must provide photo identification. Where the requester is not the person to whom the personal information relates, then the requester must provide proof of his authority to have access to the information (reg.12).

3. Clarify request to best meet requester's needs

The Information Officer may seek to clarify the request with the requester to ensure that the appropriate records are secured in order to fulfill the request. This may require clarification of the request to better define the parameters. See the section within this Code on [Clarify Request](#).

4. Communicate with requesters throughout the process, where appropriate

Information officers should keep requesters fully informed of the status of their applications. There are several time-sensitive steps for communication that must be adhered to. In addition, before a Public Authority decides to refuse a request on certain administrative grounds (s.16(1)(b) or (c)), the Information Officer must consult with and offer to assist the requester, providing them the opportunity to narrow the request. Generally, however, it would be appropriate and in accordance with the duty to assist in section 12 to communicate with an applicant if a denial on administrative grounds is being contemplated. See the section within this Code on [Administrative Grounds for Refusal](#).

5. Acknowledge receipt of the request

The Information Officer should acknowledge receipt of a request within five working days after receipt (reg.6), and inform the requester of the process and the requester's rights under the Act (s.13(4)). See Appendix I *Sample Letter 1: Acknowledging receipt of request*.

6. Inform requester if records requested are already published records

The Information Officer should inform the requester when it is known that a record is already published and provide details where the information can be accessed or provide access to that information. This will enable rapid access to the information requested and reduce the need to process the request as a PATI request. See Appendix V *Sample Letter 5: Informs applicant that information is already available*. If the request has already been logged into the PATI Tracking System as a PATI request before the public authority realises

the information is in the public domain, the request should be administratively denied under section 16(f) because the information is already in the public domain.

7. Transfer requests as necessary

Sometimes requests are submitted to a Public Authority that does not hold the relevant records. The Information Officer should transfer such requests to other Public Authorities after consultation with the Requester. If agreed, the Information Officer must contact the Information Officer of the Public Authority which is to receive the transfer and inform them of the request (reg.8). The transfer must be made formally via the established tracking system or sent by email, and a notice of the transfer sent to the Requester. See the section within this Code on [Transfer Request](#) and Appendix III *Sample Letter 3: Notice of transfer of request*. Note, that in some cases, the Requester may prefer to withdraw the PATI request rather than have it transferred to a different public authority.

8. Assist special persons

The Information Officer must assist persons who have limited ability to read or write English or persons with any mental or physical disability with their application (s.12(2)).

9. Make reasonable efforts to locate requested records

Information Officers are required to make reasonable efforts to locate a record requested and to document these efforts (reg.5). A record is any form or medium in which information is held (s.3).

10. Notify requester of an extension of time required to fulfill the request.

If an extension of time to fulfil a request is required, the Information Officer should secure the opinion of the Head that the original period was not practical and then notify the requester in writing, before the expiration of the original period, of the extension and the reasons for it (s.15(2)). See Appendix IV *Sample Letter 4: Extension of time to process request and reasons*.

11. Examine records to determine access

Records which have been located must be examined by the Information Officer to determine whether—

- a. the record is exempt in its entirety;
- b. the record contains exempt matter; or
- c. access should be granted.

A list of the exemptions can be found in the [Exemptions](#) section of this Code. Legal advice should be sought if required. All evidences and rationales considered when claiming an exemption should be documented to support the decision(s), where required

12. Notify Third Parties

If the Information Officer intends to release a record which the Head of the Authority believes might contain personal information, commercial information or information received in confidence the Head of the Authority must notify the third party to whom the information relates or who gave the information to the public authority (s.39(1)). The third party may agree to the release of the record or may submit a written representation regarding the disclosure within 14 days of notification. The Information Officer must then consider any representations in the decision-making process. See the section in this Code on [Third Party Information](#).

See Appendix IX *Sample Letter 9: Third Party Notification – Notice to requester* and Appendix X *Sample Letter 10: Third Party Notification – Advising a third party their information has been requested*.

13. Redact exempt information if required

The Information Officer is required to redact information where a record is determined to contain exempt matter. Redaction means the censoring or obscuring of part of a text. See the section within this Code on [Redaction](#) for more details on how to redact and when it is most appropriate to use redaction.

14. Render a decision

The Information Officer is required to convey in writing to the requester and any relevant third party the decision to grant in part or in whole or to refuse the request for information. The reasons, facts, and any other relevant information, including public interest factors, considered in the decision-making must be clearly stated (s.14).

See Appendix XII *Checklist for preparing a Decision*, Appendix VI *Sample Letter 6: Grant of access to a record*, and Appendix VIII *Sample Letter 8: Informs applicant request is denied*.

15. Monitor the requester's inspection of records

When a request is made to view the original records, the Information Officer must monitor the requester on-site through the inspection process to avoid theft or damage to records.

16. Determine if access to a request on behalf of a minor shall be granted

A parent or guardian may request access to information, including personal information, relating to a child. The Information Officer determines if access shall be granted. Consideration is given to whether the information is ordinarily available or, after consultation with the Director of Child and Family Services, access would not be in the best interests of the child (reg.21). See the section in this Code on [Personal Information](#).

17. Provide the record in the manner requested where applicable.

Once a decision has been conveyed, the Information Officer should provide access to the record concerned, within the form or manner of access determined according to the specifications of ss.13(3) and 17 of the Act. See the section in this Code on [Manner of Access](#).

18. Assess Fees

The Information Officer on behalf of the Public Authority can calculate fees for the provision of access to a record. No fees are payable for simply making a request (s.20). See the section in this Code on [Fees](#).

19. Maintain logs of requests

The Information Officer must make an electronic record of all applications for access as required by reg.20 and maintain a disclosure log for the Public Authority of all applications granted (s.6(2)-(4) and reg.17(f)). See the section in this Code on the [Tracking System](#).

20. Provide a written report to the Commissioner

The Information Officer, on behalf of the Public Authority, provides a written report to the Commissioner (s.58) containing the information on the number of PATI requests, decisions made and reviews conducted as it pertains to that Public Authority. See the section in this Code on [Tracking System](#). This information enables the Information Commissioner to prepare the annual report on the operation of the Act and to lay it before each House of the Legislature.

21. Maintain good practice and procedures

The Information Officer should document all correspondence and track all steps taken to appropriately fulfill requests. This includes maintaining records, originals and redacted. This is especially important in the event of a review.

22. Publish an Information Statement

The Information Officer coordinates the information required to be published under s.5 of the Act, see the section in this Code on [Information Statements](#). The Information Statement should be reviewed periodically and updated with the approval of the Head annually or more frequently as necessary.

23. Provide other information

The Information Officer also coordinates the information required to be published under s.6 of the Act, see the section in this Code on [Other Information](#). Such information includes a log of all access requests, quarterly expenditures, and details of contracts

entered into with a value of \$50,000 or more. See Appendix XIII *Template for Government Notice – publication of contract information*.

24. Ensure Publication Scheme is published

The Information Officer is responsible for ensuring that the relevant publication scheme for a Public Authority is published annually. The publication scheme is the list of all documents published by the Authority. This function may be performed in conjunction with other Public Authorities (reg. 17(k)).

25. Keep current with PATI developments

It is imperative that the Information Officer keep up to date on his knowledge of the Act, the laws relevant to the administration of the Public Authority, other PATI Codes, and the laws and practices affecting the management of records and information.

Competencies Required

10.6 In order to effectively discharge the functions prescribed above, the Head of the Public Authority must ensure that the Information Officer possesses the following competencies:

1. Ability to develop internal procedures necessary to establish a strong framework to support the implementation and administration of PATI in collaboration with the Head of the Public Authority;
2. A working understanding of PATI legislation and guidance with the appropriate training and support.
3. Comprehensive knowledge of the operations of the Public Authority sufficient to facilitate analysis of requested records and decision-making;
4. Ability to discern the need to seek and lead consultation with subject-matter experts within the Public Authority to aid decision-making;
5. Ability to adapt existing or create response templates appropriate to the specific issues of the request (The PSS can assist if required);
6. Ability to oversee other officers who may assist with PATI compliance;

7. Awareness of laws, other than the PATI Act, and policies which permit access to information held by the Public Authority, how access is granted and any restrictions to granting access; and
8. Strong verbal and written communication skills required to provide assistance to requesters.

11. RESPONSIBILITIES OF THE HEAD OF EACH PUBLIC AUTHORITY

11.1 It is the responsibility of Heads along with the Executive and Senior Management within each Public Authority, such as Permanent Secretaries, Chairpersons, CEOs, Department Heads, Board members, Executive Teams, Senior Management, and the equivalent, to promote the PATI objectives in the context of the operations of the Public Authority and to ensure effective implementation of the Act and the guidance set out in this Code. It is incumbent upon the Heads, Executives and Senior Management to adopt the principles and objectives of the Act, support and attend training, and provide sufficient resources for appropriate and effective compliance.

11.2 There are a number of functions and responsibilities in the Act that are assigned specifically to the Public Authority (see [Responsibilities of Each Public Authority](#)). As the lead officer, the responsibility rests on the Head of the Public Authority to ensure effective compliance with and discharge of these legislated responsibilities.

Responsibilities

11.3 The responsibilities of the Head of Public Authorities, with the support of the Executive and Senior Management, include, but are not limited to, the following:

1. Ensure that the appropriate internal organizational structures and allocation of resources exist to enable Public Authorities to effectively discharge their PATI functions.
2. Periodically monitor and review the necessary resources and capability of the Public Authority to meet its statutory obligations under the Act.
3. Appoint an Information Officer at the appropriate level and with the essential competencies. There may be circumstances where it is necessary to share one Information Officer amongst several Public Authorities; this is allowed for in reg.19.

4. Ensure that Information Officers have the requisite training to fulfill their functions as set out in this Code.
5. Ensure those involved in managing PATI requests support and attend training and adopt the practices necessary for compliance with the Act.
6. Ensure that Information Officers are equipped and able to manage and log requests on the electronic tracking system.
7. Ensure that written procedures are developed and adopted which address the specific organizational needs of the Public Authority in managing PATI requests. These procedures should take into consideration the training and Codes provided by the PSS.
8. Enforce the obligation to maintain a requester's confidentiality by safeguarding the requester's identity.
9. Ensure the regular publication of information on the organisation, functions, activities, expenditures and decisions of the Authority as well as information of relevance or interest to the public. If information is proactively published, it eliminates the need for a Public Authority to go through the PATI process.
10. Ensure the public authority's Information Statement is reviewed annually and an updated Information Statement published when required and submitted to the Information Commissioner (s.5).
11. Ensure that the public authority provides a written report to the Commissioner (s.58) containing the information on the number of PATI requests, decisions made and reviews conducted as it pertains to that Public Authority. See section 25 in this Code on [Tracking System](#).
12. Ensure that appropriate actions are taken within the Authority in response to binding decisions of the Information Commissioner, if issued.
13. When decisions are granted to amend personal records that are incomplete, incorrect or misleading, the Head should ensure that the amendments are implemented and, if requested to do so, shall provide the requester with evidence that the record has been amended (s.19).

Specific Functions Within the Act Assigned to Heads

11.4 The Act assigns several specific functions to the Head of the Public Authority. These are as follows:

1. Inform requester of transfer of request s.13(6)

If a Public Authority decides to transfer a request according to s.13(5), the Head shall inform the requester of the transfer in writing.

2. Extend time s.15(1)

If a PATI request is unable to be fulfilled within the original period of six weeks because it is not reasonably practicable to do so, the request may be extended for a further period of up to six weeks. In order to extend the time, the Head of the Authority must hold the opinion that compliance is not reasonably practicable on the basis of the criteria laid out in s.15(1)(a) or (b) of the Act.

3. Determine whether granting a request falls within specific administrative grounds for denial s.16(1)(c) and (e)

The Head of the Authority may opine that:

- fulfilling a PATI request would result in a substantial and unreasonable interference with or disruption of the work of the Public Authority because of the nature or number of records that need to be retrieved and/or examined(s.16(1)(c)), or
- the request is considered frivolous or vexatious (s.16(1)(e)).

If so, the request can be denied on these administrative grounds. Public Authorities must first attempt to work with the requester in accordance with s.16(2). See section 18 in this Code on [Administrative Grounds for Refusal](#).

4. Notify third parties s.23, s.25, s.26 and s.39

If a Public Authority intends to disclose a record that the Head of the Authority has reason to believe might contain personal information, commercial information, or information received in confidence, the Head of the Public Authority must notify the third party to whom the information relates and provide them with an opportunity to consent to disclosure or make submissions. See section 22 in this Code on [Notifying Third Parties](#).

5. Provide an internal review s.41, s.43, and s.44

When a requester or a third party is not satisfied with the decision of a Public Authority, they have a right to an internal review. The Head of the Authority conducts this internal review, provided they did not make the original decision. The Head of the Authority may

reach out to other resources for support in conducting the review. If the original decision was made by the Head of the Public Authority, then the application for internal review is referred to the Information Commissioner.

12. ROLE AND RESPONSIBILITIES OF THE POLICY AND STRATEGY SECTION

12.1 The Policy and Strategy Section (PSS), within the Cabinet Office, has been delegated the responsibility for the administration of the PATI system for Public Authorities. The mandate of the PSS with regard to implementation of the PATI legislation is to assist in the discharge of the Minister's responsibility and put in place other elements necessary to facilitate the effective functioning of the internal mechanisms for the implementation of and compliance with the Act.

12.2 The PSS provides training for Information Officers, senior management, and Heads of Public Authorities (s.61). Training enables the promotion of standards and use of best practice methods along with consistency of approach, where appropriate, for responding to requests and implementing procedures. The training programme incorporates guidance and decisions from the Information Commissioner's Office (ICO) to facilitate compliance with the Act.

12.3 The PSS will ensure the development and establishment of Codes of Practice for Public Authorities regarding the administration of the Act and the maintenance and management of records of Public Authorities. These Codes serve to meet the former requirement (s.60(1)).

12.4 The PSS has produced a number of templates to assist Public Authorities in responding to requests. The use of the templates is intended to suggest an approach and promote consistency in responses. Templates may be adapted by Public Authorities as necessary to address specific situations. [\(See Appendices\)](#)

Functions

12.5 The PSS will provide advice and guidance to Public Authorities as follows:

- 1. Review responses**

As requested, review responses of Public Authorities, e.g. letters and documents, to ensure compliance with the Act.

- 2. Provide Advice and Guidance**

- a. Provide evidence-based policy advice to the Minister.

- b. Provide advice and guidance to Public Authorities on the process and technical matters.
- c. Provide advice to Public Authorities consistent with advice obtained from legal advisors, ICO guidance, the Information Commissioner and judicial decisions on review.

3. Liaise with the designated legal advisor

Liaise with the designated legal advisor to obtain advice on key issues relating to the operation of the Act, ICO guidance, the Information Commissioner and judicial review decisions.

4. Communicate

Communicate with Public Authorities, sharing information as necessary on, but not limited to, technical matters, training, legislative amendments and procedural changes and developments.

5. Publish Information

Ensure the annual publication of a list setting out the title and corresponding salary range of every position of public officer in the government (s.6(7)).

C. PUBLICATION

A public authority shall provide information to the general public about information it holds ... and on how to access information held by the public authority, to enable the public to have minimum need to resort to this Act for obtaining information held by a public authority, s.6(1).

13. PUBLICATION OF INFORMATION

13.1 In general, the records held by a Public Authority are considered a national resource and should be made available and accessible to the public. Under the Act, Public Authorities are required to provide information to the public in order to increase openness and transparency, to eliminate unnecessary secrecy and to have more information published and accessible as a matter of routine. The outcome of this approach can be anticipated as a reduction in the volume of PATI requests and a decrease in resources necessary to process PATI requests. Along with an Information Statement, there are several specific items identified for publication, along with the routine proactive disclosure of unrestricted information. The information for publication includes:

Information Statements

13.2 Every Public Authority is required to prepare and publish an Information Statement. The Information Statement serves as a tool to assist the public in knowing the information held by the Public Authority and how to access it. It explains where the Authority is located, the services it provides, the types of records it keeps, the legislation under which it operates and how its staff are organized (s.5).

13.3 The basic content of the Information Statement is prescribed in s.5(1) of the Act and includes:

1. a description of the structure and organization of the Authority;
2. a list of the legislation governing the Authority;
3. a description of the functions, powers and duties of the Authority, including its obligations under this Act;
4. a summary of the services that the Authority provides, including ongoing programs;
5. a description of all classes of records that are held by the Authority, in sufficient detail to facilitate the exercise of the right of access under this Act;

6. a description of all manuals used by employees in administering or carrying out the programs and activities of the Authority;
7. a description of the policies, rules and guidelines used by the Authority to make decisions or recommendations in respect to any person;
8. the name and contact information of the person designated by the Authority as the Information Officer;
9. any other information that the Head of the Authority considers relevant to facilitate access by the public to information; and
10. any other information that may be prescribed.

13.4 The Information Statement should be reviewed periodically by the Public Authority and updated annually or more frequently as necessary. The Public Authority may decide how the periodic review will be conducted. For example, the review may be conducted by the Information Officer and any changes approved by the Executive Team/Senior Management. In instances such as Ministry reorganisations, changes in responsibilities of the Public Authority or changes in Information Officers, the Information Statement should be updated as soon as possible to avoid confusion to the public. Public Authorities should ensure the accuracy and completeness of the Information Statement.

13.5 The most up to date copy of the Information Statement must be provided to the Information Commissioner (s.5(5)). A copy should also be made available for inspection by the public at the Public Authority's principal office, the National Archives, the Bermuda Library and on the Authority's website (s.5(3))

13.6 All officers within the Public Authority should be familiar with the information in the Information Statement.

13.7 The Information Commissioner has provided guidance to all Public Authorities with regard to the preparation of information statements. This ICO Guidance "Information Statements: Criteria for Compliance Assessment" can be found on [the ICO website](#) and should be read in full by all officers of the Public Authority involved in the preparation, drafting, or amendment of the Information Statement.

13.8 The Information Commissioner may monitor and provide guidance to individual Public Authorities with regard to the preparation of Information Statements. The Information Commissioner may also review the Information Statement of any Public Authority to determine

its compliance with the requirements set out in the PATI Act. Where a Public Authority has not published an Information Statement or where the Commissioner determines that an Authority's Statement does not comply sufficiently with the Act, the Commissioner may issue an order to the Authority requiring it to publish its statement or bring it into compliance. The time frame will be specified by the Commissioner.

Other Information

13.9 A Public Authority is required to provide additional information regularly to the public. Under the Act, there are several specific items Public Authorities are required to provide to the public either upon request or through a gazette notice (s.6). These include:

1. A log of all requests for information

This log must exclude the names of requesters, any other information that could reveal the identity of the requester and any personal information about any person. It should include the decision to grant or refuse the request and, if refused, the specific exemptions or administrative denial provisions relied upon and the reasons for refusal. The log must be made available to members of the public upon request, together with any information that was provided in response to granting the request for information, except for a requester's own personal information.

2. Quarterly expenditures

Public Authorities are required to make their quarterly expenditures available to the public upon request.

3. Contracts with values of or greater than \$50,000

- a. Public Authorities must publish in the Official Gazette on a regular basis details of every contract entered-into by the Authority that has a total value of \$50,000 or more. This includes contracts for all goods and services provided to the public authority (e.g., cleaning, security, equipment rental, pest control, gardening etc.) including services supplied by consultants.
- b. Details of every contract that covers a multi-year period and has a cumulative value of over \$50,000 must be published in the Official Gazette. In other words, in cases where the amount payable under a contract for a single year does not exceed \$50,000, but the total value of the contract over the entire period of the contract (i.e., 2, 3, 4, 5 years, etc.) exceeds \$50,000, the public authority must publish details of the contract.

- c. At a minimum, the publication must occur on an annual basis. Public authorities which enter into new contracts over \$50,000 every quarter should publish the contract details on a quarterly basis. The information published must include: the name of the contractor, the monetary value of the contract, the goods and services to be provided under the contract and the time for performance of the contract (completion or delivery date). See Appendix XIII Template for Government Notice – publication of contract information.
- d. Gazette notices should be sent to the Cabinet Office to be posted in the Official Gazette.

13.10 A Public Authority is required to let the public know about the information it holds, and to do so annually. This information held by an Authority can be provided through a variety of media options such as print, radio, television and online websites. The Authority is also required to inform the public on how to access information held by the Public Authority (s.6).

13.11 The Commissioner may monitor and provide guidance to Public Authorities with regard to the provision of other information. If the Information Commissioner determines that a Public Authority has not complied with s.6, the Commissioner may issue an order to the Authority requiring it to provide this other information and specifying the period for compliance (s.8).

Routine Proactive Publication of Records

13.12 In addition to legislatively required publication, Public Authorities should pre-empt requests that may arise by proactively publishing information. This will allow access to information held by the Public Authority and will enable the public to have minimum need to resort to this Act for obtaining information (s.6). Information that should be published proactively includes:

1. information on the organisation, functions, activities, expenditures and decisions of the Public Authority;
2. information which is consistently the subject of PATI requests (e.g. where more than one request has been received for the same information, the information can be considered to be of general interest to the public); and
3. information whose release is not restricted under the Act or other legislation should be published at regular intervals (e.g. Ministers' and special advisors' travel and subsistence costs and expenses, and select aspects of procurement processes).

13.13 Care must be taken to ensure that the information published does not include exempted information. If the published information was received from a third party, the Authority must ensure that it is authorized to publish the information (e.g. determine whether the information is subject to copyright).

13.14 Information should be readily accessible and prominently published in the PATI section of the website of the Public Authority. In addition to website publication, copies of the information should be available for inspection on the premises of the Public Authority as an alternative for people who cannot access the information via the website.

D. THE PROCESSING OF REQUESTS

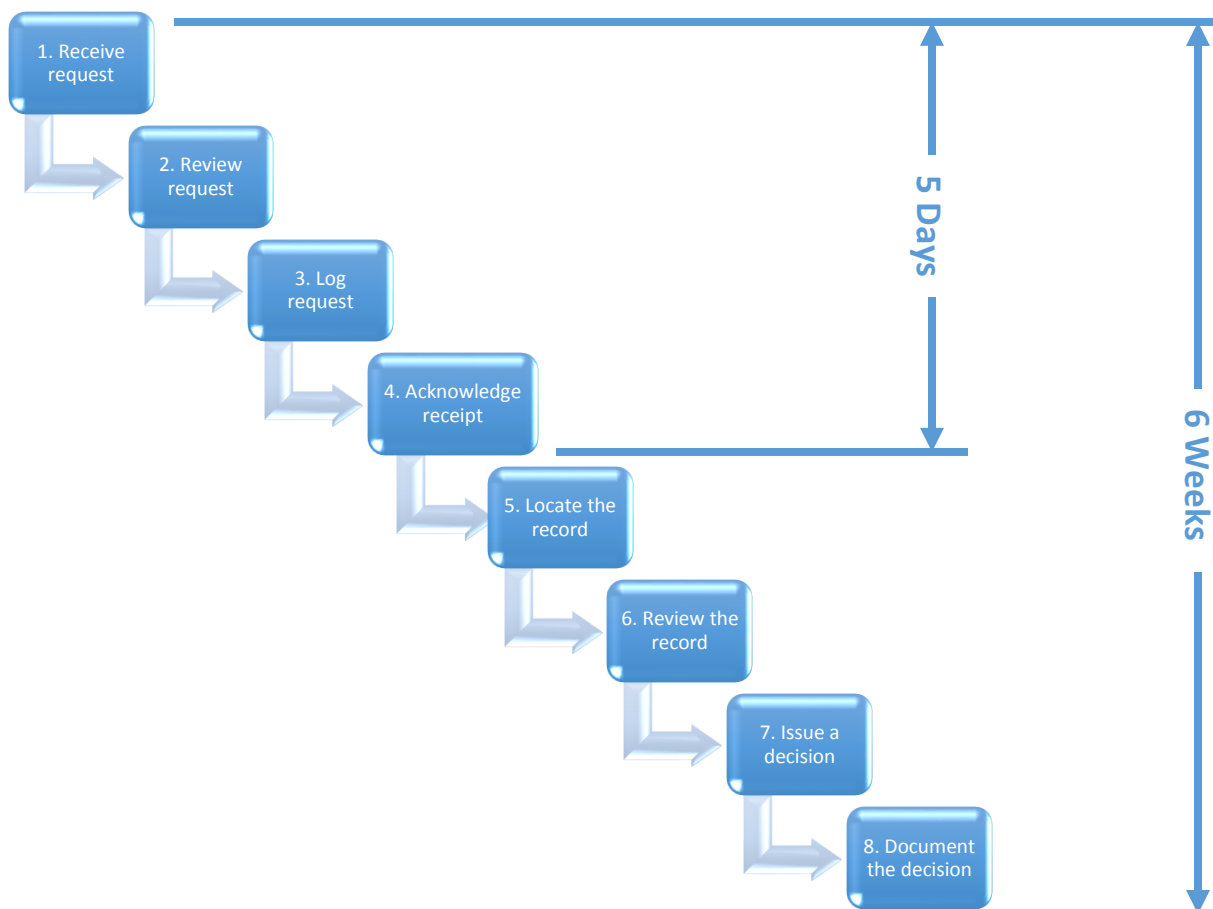
The purpose of the Act is to give the public the right to obtain access to the information held by public authorities to the greatest extent possible, subject to exceptions that are in the public interest or for the protection of the rights of others s.2.

14. PROCESSING A REQUEST

14.1 When overseeing the initial processing of a request, the Information Officer is the responsible officer for ensuring compliance with the Act and adherence to timelines.

14.2 There are eight basic stages in the process of responding to a PATI request, as follows:

Stages of the Basic Process in Responding to a Request



14.3 Step 1: Receive a PATI Request

1. The PATI process is initiated when the requester submits a request in writing (including by email) to a Public Authority for access to a record (s.13(1)). A PATI request can be submitted using the [Public Access to Information Request Form](#). However, this is not required so long as the details in Schedule 1 of the Regulations are included. The request must identify the record or contain sufficient information to enable the record to be identified. If the request does not contain sufficient information to enable identification of the record the Information Officer must seek clarification from the requester first. This can be by phone, email or letter (see Appendix II *Sample Letter 2: Request for further information – needed to process request* and the section in this Code on [Clarify Request](#)). If discussions take place by phone the conclusions and agreements should be documented in writing by follow-up mail or email.
2. The Public Authority should have internal procedures in place on how they will accept the PATI request including: where the request will be accepted; who will accept the request; and a place where the requester can meet with the Information Officer. The internal procedures should not impose requirements or burden on the requester other than what are required by the PATI Act or Regulations. Requests can be accepted by an officer of the Public Authority and directed to the Information Officer (reg. 6(1)). These procedures must ensure the confidentiality of the requester.
3. The Information Officer must be satisfied that the PATI requester is a Bermudian or a resident of Bermuda. This identity may be determined by possession of a valid official government issued photo identification including driver's license or passport. Residency may be authenticated by a copy of a current local bill in the requester's name.
4. Persons who are applying for access to their personal information must provide the appropriate photo identification. Where the requester is not the person to whom the personal information relates, they must provide proof of their authority to have access to the records (reg.12). Such proof may be validated by:
 - e. a power of attorney,
 - f. a court order,
 - g. probate or letters of administration, or
 - h. written authority by a next of kin of the person to whom the information relates.
5. The identity of the requester must be kept confidential, see the section in this Code on [Requester Confidentiality](#). Their identity must not be disclosed to any person other than

a person required to deal with the request under the Act, unless the requester gives consent. Any such consent should be obtained in writing.

14.4 **Step 2: Review request**

1. Once the request has been received, the Information Officer must review the request to make sure they understand the scope of the PATI request. If necessary, the Information Officer should talk to the applicant to fully understand the request and its scope. The Information Officer is encouraged to confirm their understanding of the scope of the request with the requester in writing, such as by email.
2. The Public Authority then should determine if access to the records requested can be obtained by any other procedures. If the records can be obtained by other procedures (for example, information on registered trademark can be obtained from searches at the Intellectual Property Office and an employee's personnel records can be obtained via ordinary human resources procedures), a PATI request is not required and the records can be disseminated using normal practice or in accordance with the statutory requirements. See Appendix V *Sample Letter 5: Informs applicant that information is already available – Not processed under the PATI Act*.
3. Similarly, if a requester asks for records or parts of records that the Public Authority can immediately provide (for example, a request for the Public Authority's published annual report), the request need not be processed as a PATI request.
4. If the records are not readily provided, the Information Officer must then review the request to determine if their Public Authority holds the records requested.
5. If the Information Officer determines that the request has been submitted to the wrong Public Authority, the Officer should first consult with the requester before deciding to contact another public authority. If the requester agrees to the transfer, the Information Officer should consult with the other Public Authority's Information Officer on its functions and duties and the likelihood of the other Public Authority having relevant records. If a transfer is required, the Information Officer must transfer the request within five working days of receipt by providing a copy of the request to the other Public Authority. The Head of the Public Authority must formally notify the requester indicating the request has been transferred to the appropriate Public Authority, naming the Authority (reg.8). See Appendix III *Sample Letter 3: Notice of transfer of request*. The PATI process is initiated anew by this appropriate Public Authority at the time they receive the transferred request. The initial Information Officer must record this as a PATI request in

the tracking system and indicate the request was transferred. More information is provided in the [Transfer Request](#) section of this Code.

14.5 Step 3: Add request to the log (or tracking system where in use) (reg.20).

1. The Information Officer is required to keep an electronic register of valid requests.
2. The Government has implemented a computerized tracking system for compliance, convenience and standardisation of the monitoring and tracking of requests. See the section in this code on [Tracking System](#). If this system is used by the Public Authority, an application number will be given by the tracking system and, at this stage, the Information Officer must enter:
 - a. the name of the requester
 - b. the date of the application, and
 - c. a summary of the request without reference to the Requester's name or any identifying information.
3. If a separate system is used, a tracking number must be assigned to the request and the above details entered.

14.6 Step 4: Acknowledge receipt of request s.13(4)

1. Within 5 working days after receipt of a request the Information Officer must send written notification to the requester acknowledging their request has been received. This notification should also inform the requester of the process for dealing with the request and their rights under the Act, including;
 - a. information on who will process the request,
 - b. the deadline for issuance of the response,
 - c. a statement informing the requester that a review may be sought if no response is received by the deadline date stated, and
 - d. a statement on the requester's rights to have a decision reviewed.

See Appendix I *Sample Letter 1: Acknowledging receipt of request* as a template.

14.7 Step 5: Locate the record

1. Once the PATI request is acknowledged and it has been determined that the Public Authority holds the records requested, the Information Officer must make reasonable

efforts to locate that record. This is an absolute requirement under regulation 5(1). The Information Commissioner has indicated that reasonable efforts still need to be made even if the Public Authority believes that the records are not held, could not be found, or did not exist.

2. In some instances, the records requested can be easily identified, while in others it may be more difficult. If the Information Officer feels that they do not have enough information to process the request or they need to narrow a request, they must reach out to the requester offering to assist and to seek further information (see the section in this Code on [Clarify Request](#)). The Information Officer must make all reasonable efforts to assist in satisfying the request and demonstrate that a comprehensive and thorough search was carried out.
3. Regulation 5(2) requires the Information Officer to document the efforts made to locate the records only if such records could not be found. It is strongly encouraged, however, that the Information Officer or their delegates document their efforts to locate the records responsive to a PATI request. This may include documenting the locations that were searched, the individuals that were contacted, the names of individuals involved in the search, and the time that was spent to locate the records.
4. Records can exist in multiple formats. A request for records can involve searching: paper files in a central filing system as well as in individual offices; a central electronic database, including shared directories; email accounts and computer hard drives of employees who may have dealt with the subject matter of the request; satellite as well as head offices; and even off-site record storage for older records.
5. It is important to note that PATI applies to records already retained within the Public Authority at the time the request was made and Information Officers are not required to create new records to satisfy the request. The Information Officer, at their discretion, can offer to create a record if doing so would be more expeditious and would be agreeable to the requester. For example, if a requester only wants statistical data, it may be easier to prepare a list of that information drawn from the records than to copy and redact the original records. It is important to make sure the requester is agreeable to this option.
6. There may be times where the information requested may not exist in an easily accessible format in relation to the request. For instance, the information may exist in multiple records. It is still incumbent upon the Information Officer to communicate with the requester and facilitate the request to the best of their ability.

7. A request to access records may be refused if the Public Authority could not locate the responsive records, if the records did not exist, if the requester did not provide sufficient information in the request to allow the Public Authority to locate the record, or the request is considered vexatious or frivolous. Some of these grounds require the Public Authority to consult with and offer to assist the requester before the request is denied. See the section in this Code on [Administrative Grounds for Refusal](#).

14.8 **Step 6: Review the Record**

1. Once the appropriate record has been retrieved, the Information Officer must review the document thoroughly to determine if the records or part of the records can be released or if they contain exempt information. The Act promotes the full grant of access to records except in prescribed circumstances. If these circumstances do not apply, then there is no just cause to withhold the release of the record. These prescribed circumstances are listed in the section of this Code on [Exemptions](#).
2. Where the request relates to information supplied by one Public Authority to another, the Public Authority may wish to consult the Public Authority that provided the information before making a decision to disclose or withhold the records. Similarly, if the request relates to a third party and involves information that might fall with section 23 (personal information), 25 (commercial information) or 26 (information received in confidence) of the Act, the Public Authority may wish to consider consulting the third party before making a decision on the PATI request. (See the section in this Code on [Third Party Information](#).) This will ensure that the Public Authority takes into consideration all relevant factors and potential exemptions.

14.9 **Step 7: Issue decision on request s.14/ reg.4**

1. After reviewing the document and within 6 weeks of receipt of request, the Information Officer must issue a decision on whether to grant or refuse access to a record (see Appendix XII *Checklist for preparing a Decision*), and determine the manner in which the record concerned is to be given (see the section in this Code on [Manner of Access](#)). At this time, they must also determine whether fees will be charged and what they will be. (See the section in this Code on [Fees](#).)
2. A request for a record may have one of the following outcomes which must be clearly communicated to the requester:

- a. The Information Officer will grant access in whole where full access is granted to all of the information requested by the requester.
 - b. The Information Officer will grant access in part where some of the records requested or sections of the record will be released and others withheld or redacted.
 - c. The Information Officer will refuse to grant access to records, where a record is exempt from disclosure, where one of the administrative denial grounds set out in section 16(1) of the PATI Act is applicable, or where the record falls within an exception in section 4(1) of the Act.
3. Once the decision is made, the Information Officer must notify the requester in writing and set out the basis of the decision. This decision letter should include:
 - a. The number and nature of records relating to the request;
 - b. The decision whether to grant or refuse access to records, either in full or in part;
 - c. References to the relevant sections of the Act where access is not being granted in full or in part;
 - d. The reasons for the decision, including findings on any reasons, facts, and any other relevant information, including public interest factors relevant to the decision;
 - e. Particulars of any matter relating to the public interest taken into consideration for the purposes of the decision; and
 - f. The provisions of the Act regarding review and appeal of the decision.

See Appendix VI *Sample Letter 6: Grant of access to a record* and Appendix VIII *Sample Letter 8: Informs applicant request is denied*.

4. Where the request relates to several records, a schedule may be attached to the decision letter providing details of those records being released in full, of those to which partial access is being given and of those being refused. Such a schedule will be required by the Information Commissioner should the requester ask for a review by that Office, so preparation of a schedule at the outset is a best practice that can save time and ensure consistency later.
5. Where a decision is to grant a request, the Public Authority shall provide access to the record as soon as possible (see the section in this Code on [Manner of Access](#)) if practicable.
6. If the decision is to release the record in part, there may be some redaction involved. This involves the censoring or obscuring of part of the text of the record (see the section in this Code on [Redaction](#)). In this instance, the Information Officer must document the specific exemptions under the Act for each redaction.

14.10 **Step 8: Document Decision in the tracking system**

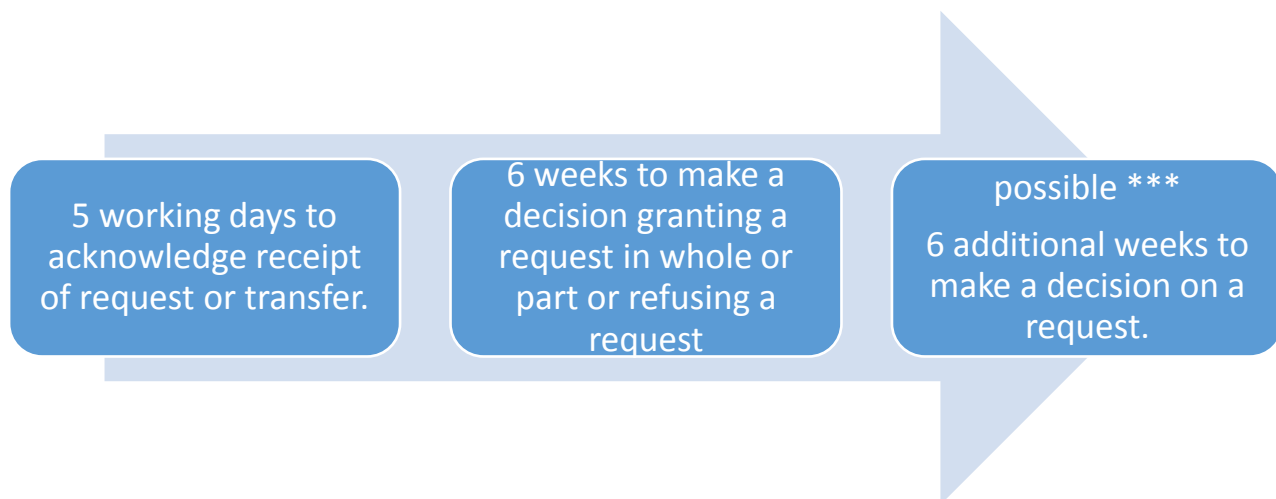
1. Once the Information Officer has issued a decision and presented the requester with a response and required records, they must document their decision in the tracking system. It is important that as much information as possible is entered into the tracking system. This is done in the event that the decision proceeds through internal review and/or a review by the Information Commissioner. Having documented all considerations allows for the person conducting the review to better understand the process followed, the decisions made and the rationales for those decisions. The documentation also provides evidence that the Information Officer executed their duties under the Act.
2. If the Government tracking system is used, the following information must be supplied:
 - a. the date of response,
 - b. a summary of the information provided,
 - c. if the request was refused, the specific clause(s) of the Act applied along with reasons, and,
 - d. if an internal review is requested, the outcome of that review.
3. If possible, all documents should be uploaded into the system. This includes but is not limited to: response letters, correspondence between the Information Officer and the requester, documents used as a basis for the decision, notices to third parties, and any third party submissions.

14.11 **Extension of Time (s.15)**

1. A Public Authority may extend the original six-week period for a further period, not to exceed six weeks. This should be done under the opinion of the Head of the Public Authority where the original period is not reasonably practicable because:
 - a. there is insufficient time to consider representations made by third parties or to complete any consultations with regard to whether access to particular information is in the public interest; or
 - b. dealing with the request within the original period of six weeks would substantially or unreasonably interfere with the day to day operations of the Authority.

2. It is important to note that it must be objectively reasonable for the Head of the Public Authority to extend the time to process the request. Simply expressing the opinion and approving an extension in circumstances, when doing so would not be objectively reasonable, is contrary to section 12 of the Act where responses must be issued in a timely manner. Nonetheless the Information Officer should respond in a timely manner. Written notice should be given to the requester before the expiration of the original period, explaining the extension and the reasons for it.

14.12 Timelines in process



ADDITIONAL ELEMENTS OF THE PROCESS

15. CLARIFY REQUEST

15.1 A Public Authority may require clarification from the requester at any step of the process in order to respond appropriately to a PATI request. Where the request contains insufficient information for these purposes, the Information Officer must contact the requester as soon as possible to clarify the request. This may be conducted in writing, by email or letter, or by phone and followed up in writing. The Information Officer should document all communications and maintain a schedule of such.

15.2 Clarifying the request includes:

1. Confirming the scope of the request and asking for more detail relating to the information sought where necessary,
2. providing all reasonable assistance to the requester to enable a clear identification of the information requested (eg. explaining the type of records held and referring to the information statement), and
3. explaining the need to obtain additional information.

15.3 Clarifying a request does not include:

1. seeking to determine the intentions or motivations of the requester, or
2. implying that the requester must disclose the purpose of the request as a precondition to the grant of access.

15.4 Where the Information Officer has made every reasonable effort to offer to assist the requester and the requester does not clarify the request so that the record can be identified and located, the Information Officer:

1. is not required to seek further clarification of the request;
2. shall disclose any information relating to the request that has been successfully identified and retrieved, if applicable, provided it is not information that is exempt from disclosure;
3. may refuse the PATI request on the basis that it does not contain sufficient information to allow the public authority to locate the records, under section 16(1)(b) of the PATI Act (see the section in this Code on [Administrative Grounds for Refusal](#));
4. must explain to the requester why the Authority is unable to process the request any further or disclose more information; and
5. provide details of the requester's right to have the decision reviewed under section 41 of the Act.

16. TRANSFER REQUEST

16.1 Sometimes requests are submitted to a Public Authority that does not hold the relevant records. If the Public Authority receiving the request knows that the relevant records are held by one or more Public Authorities, such requests should be transferred to that other Public Authority, after consultation with the requester and the Information Officer at the other appropriate Public Authority. The Information Officer receiving the initial request makes the determination to transfer and the Head of the Public Authority notifies the requester within five working days of receipt of the request (s13(6)).

16.2 When it is established that a Public Authority does not hold the records requested and that they are held by another Public Authority, the Information Officer should:

1. Contact the requester to advise that the information requested may be held by another Public Authority;
2. Confirm whether the requester would like the request transferred.
3. Confirm with the Information Officer of the other Public Authority whether it, in fact, holds the record that has been requested;
4. Transfer the request within five working days following receipt of the request (s.13(5));
5. Advise the requester accordingly within five working days (must be done by the Head); and
6. Provide the requester with the contact information of the other Public Authority.

16.3 The Public Authority receiving the transferred request begins the process anew from the time of receipt of the request and ensures it is a valid PATI request. If necessary, the Information Officer of the Public Authority receiving the transferred request should confirm the Bermudian status or residency of the requester.

16.4 Requests may be transferred in the tracking system or manually sent. The transfer should be made by giving a copy of the PATI request to the other Public Authority. For their own records, Public Authorities may wish to send a letter to the other Public Authority, formally transferring the request and attaching a copy of the request. The initial Information Officer should notify the receiving Information Officer by telephone or email that a request has been transferred. The receiving Information Officer should confirm receipt.

16.5 If the requester does not agree to the transfer, the Information Officer must record this in the tracking system and indicate that the requester did not want to have the request transferred. The request would therefore no longer be actionable as the record is not held by the Public Authority to which the request was made (s13(1)). Note that if the original Public Authority has records that fall within the PATI request, it should proceed to process the PATI request in these circumstances.

16.6 If only part of the request needs to be transferred, the Information Officer should separate the relevant components to be transferred into a new request and then follow the ordinary transfer procedure.

17. MANNER OF ACCESS

17.1 Manner of access refers to the ways to which a requester can receive access to a requested record, once it is determined that access can be given. The following are forms or manners the Act considers appropriate (s. 17):

1. Reasonable opportunity to inspect the record.
2. Copy of record.
3. A transcript of the information.
4. An electronic machine-readable device or other electronic device that contains the information. (If any cost is involved, that cost will be the responsibility of the requester.)
5. If the record is of sound or visual images, a reasonable opportunity to hear or view the record.
6. A decoded copy of the information where information is in shorthand or another code.
7. Other means determined by the Public Authority.

17.2 A requester may specify in which form or manner listed above they wish to be given access (s.13(3)). A requester should be granted access in that form or manner unless the Public Authority determines another form or manner would be significantly more efficient or if giving access in the manner requested would:

1. be physically detrimental to the record;
2. involve an infringement of copyright (other than copyright owned by the Crown, the government or the Public Authority concerned);
3. conflicts with a legal duty or obligation of the Public Authority concerned; or
4. affects the protection of an exempt record from disclosure.

17.3 If the Public Authority decides, for the reasons above, that the manner of access requested is inappropriate, the Public Authority can give access in a form or manner that they consider appropriate (s.17(3)). It should be noted that if a Public Authority refuses to give access to a record in the form requested by the Applicant, that decision can be reviewed in an internal review and by the Commissioner.

18. ADMINISTRATIVE GROUNDS FOR REFUSAL

18.1 The Information Officer may refuse a request for a record on administrative grounds under section 16 of the Act. Some grounds require an opinion from the Head of the Public Authority in order to be relied upon. The key grounds of refusal are as follows:

1. The record does not exist after all reasonable steps to locate the record have been taken, when appropriate, and documented by the Information Officer. s.16(1)(a)
2. The record cannot be found after all reasonable steps to locate the record have been taken and documented by the Information Officer (s.16(1)(a)).
3. Insufficient information to enable the Public Authority to identify the record has been supplied, despite the Public Authority making every reasonable effort to assist or offer to assist the requester to clarify the request (s.16(1)(b)).
4. The information requested is in the public domain or is reasonably accessible to the public (s.16(1)(f)).
5. The information will be published, by law, within three months of receiving the request (s.16(1)(d)).
6. The information is reasonably available to the public on request under any other statutory provision, either for free or for a fee (s.16(1)(f)).
7. If, in the opinion of the Head of the Authority, the request is frivolous or vexatious (s.16(1)(e)).
8. If, in the opinion of the Head of the Authority, granting the request would cause a substantial and unreasonable interference with or disruption of the other work of the Public Authority. Such a decision must be based on a number of factors including, but not limited to: the number or nature of the records requested; the extent of retrieval and examination of such number of records; the resources available within the Authority (s.16(1)(c)); and the time involved in processing the request (reg.9).
9. The fee has not been paid (s.20).

18.2 A number of considerations accompany these statutory grounds of refusal identified above. These include:

1. A Public Authority cannot refuse access on administrative grounds in s.16(1)(b) or 16(1)(c) if they have not first assisted or offered to assist the requester to amend the request. See Regulation 9 in relation to s.16(1)(c) of the Act.
2. Requests for information that are in the public domain should not be processed as PATI requests and should not be entered in the tracking system. If such requests are first logged and handled as PATI requests before the Public Authority realises some or all of the information is in the public domain, the Public Authority may administratively deny all or part of the request under section 16(1)(f). If this is done, the Public Authority should

ensure that it either gives a copy of the information to the requester or provides the requester with accurate information on where to find the public information e.g. a website link.

3. Efforts made to locate the record must be detailed in the refusal letter and documented in the tracking system.
4. If the information requested is not available in the record identified by the requester but is available in another record by the Public Authority then the Information Officer cannot refuse the request on administrative grounds, i.e. the record does not exist. The Information Officer should instead respond with the available record.
5. The Public Authority is not required to create a record in order to respond to a PATI request. However if creating a record would be more expeditious and agreeable to the applicant, the Information Officer has the discretion to do so.
6. Specific considerations apply to databases. If the Public Authority can retrieve the data with minimal effort, it is considered to hold that record and should process the data in response to a PATI request.

18.3 For an example of a detailed response, see Appendix VII *Sample Letter 7: Notice of refusal on administrative grounds as an example of a letter of refusal*.

19. EXEMPTIONS

19.1 While the spirit of PATI is one of openness and transparency, there are situations where records cannot or should not be released for valid reasons. Records that cannot be released are known as exempt records. Exemptions are in place to protect particular information such as personal information about an individual, or confidential matters related to national security, commercial information or ministerial responsibility. The PATI legislation identifies two sets of exemptions: absolute and qualified exemptions. Many of the exemptions in the PATI Act contain provisions outlining circumstances in which the exemption does not apply. Be sure to carefully review the full legislative provision before denying a request. The following list of the exemptions does not include a full explanation of the criteria or requirements for each exemption. Refer to publications of the Information Commissioner for more detailed guidance, found at www.ico.bm.

19.2 **Absolute Exemptions** – Refers to records or information to which a public interest test does not apply. These include the following:

1. International Tax agreements s.26A
2. Cabinet Documents s.27

3. Records held by the Attorney General or the Director of Public Prosecutions that are the subject of legal professional privilege s.35(3), s.37(6)
4. Contempt of court and parliamentary privilege s.36
5. Disclosure prohibited by other legislation s.37

19.3 **Qualified Exemption** – This refers to a record or information that is exempt subject to a public interest test that is described in s.21 of the Act. If the record or information falls within the exemption, the public interest test must be conducted to determine if it would be in the public interest to disclose the record. Records in this category, requiring the application of [a public interest test](#), include the following:

1. Health and Safety of individual s.22
2. Personal Information s.23
3. Commercial Information s.25
4. Information received in confidence s.26
5. Ministerial Responsibility s.28
6. Deliberations of Public Authorities s.29
7. Operations of Public Authorities s.30
8. Financial and economic interests s.31
9. National security, defense and international relations s.32
10. Governor's responsibilities and communications with the United Kingdom s.33
11. Law enforcement s.34
12. Legal Professional Privilege s.35
13. Non-disclosure of existence of a record s.38

19.4 If the records requested contain information that is exempt and the public interest test does not require disclosure, access to the information may be denied in whole or in part, depending on what is exempt. In responding to the request, the Information Officer must explain which exemption applies and why. If applicable, the Information Officer should also explain the public interest factors that were considered. See Appendix VII *Sample Letter 8: Informs applicant that request denied, gives reason and right of review*.

19.5 Exemptions articulated by the Act in Part 4, that is sections 22 through 38, do not apply after a period of 30 years from the date when the record was created (s.40). This does not apply to exemptions of personal information (s.23) or disclosure prohibited by other legislation (s.37).

20. PUBLIC INTEREST TEST

20.1 If the records requested contain information that fall in the category of a qualified exemption then the exempt information must be subjected to a public interest test. Decision-making should be informed by [the guidance provided by the Information Commissioner](#) on the application of the public interest test.

20.2 Application of this test requires the Information Officer, in examining the records requested, to take the public interest into account. The Information Officer must determine whether the public interest would, on balance, be better served by disclosure of the information than by non-disclosure. If the balance is determined to be equal, the information is required to be disclosed.

20.3 This disclosure gives consideration to the need to achieve openness, transparency and accountability in the decision-making of government, and the right of the people to be aware of and participate in the decision-making. Therefore public interest, as articulated in reg.2, means but is not limited to things that may or tend to:

1. promote greater public understanding of the process or decisions of Public Authorities;
2. provide reasons for decisions taken by the Government;
3. promote accountability of and within the Government;
4. promote accountability for the public expenditure or the more effective use of public funds;
5. facilitate public participation in decision-making by the Government;
6. improve the quality of services provided by the Government and the responsiveness of the Government to the needs of the public or of any section of the public;
7. deter or reveal wrong-doing or maladministration;
8. reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or
9. reveal untrue, incomplete or misleading information or acts of a Public Authority.

Balancing the Public Interest

20.4 The Information Officer must deliberate all public interest factors in favour of disclosure and all public interest factors against disclosure. These arguments must then be balanced according to their relative value. A decision is then made that considers whether the public interest lies in providing the information or maintaining the exemption. Situations involving the use of the public interest test are often complex and the considerations often subjective.

Information Officers should document their deliberations thoroughly as this serves to demonstrate their due diligence in fulfilling their duties. Acting in good faith in making a decision ensures protection under the Act.

20.5 Response letters to requesters indicating the decision must include details of the use of the public interest test, the application of it in this circumstance and all material factors taken into consideration in arriving at a decision.

21. REDACTION

21.1 In acting to disclose information, there may be instances where some records or parts of records can be released if the exempt information is redacted, i.e. blacked out or deleted. Redaction is a form of editing in which non-disclosable information is removed prior to the release of information. This may apply to individual words, sentences or paragraphs, or whole pages or sections of records.

21.2 In each instance where redaction is used, the Information Officer should note the exemption used to withhold the redacted information as the exemption may differ for varying sections.

21.3 If, in the process of redaction, it becomes clear that so much information is being withheld that the document becomes misleading, then the Public Authority does not have to prepare and provide a redacted copy (s.18(1)-(2)). In this instance, the request may be considered for refusal in whole. In its decision, the Public Authority has to explain to the requester why redaction is not practicable or why disclosure of a redacted record would be misleading.

21.4 There are a number of redaction methods and each Public Authority must decide which best applies to its records, requirements and resources. The UK National Archives have produced a [Redaction Toolkit: Editing exempt information from paper and electronic documents prior to release](#) that provides a useful guidance on principles and methods of redaction.

22. THIRD PARTY INFORMATION

22.1 Records held by Public Authorities may contain information about a third party. In relation to a PATI request, a third party means any person (other than the requester or the public authority) who gave information in the record to a public authority in confidence, or any person

to whom information in the record relates (s.1). This may include individuals other than the requester and any groups and corporations.

22.2 Public Authorities must ensure that persons whose interests are likely to be affected by disclosure of information, such as persons who supply information to the Authority, are aware, in advance of providing information to the Authority, of the Authority's duty to comply with the Act and that information may be disclosed upon request unless an exemption applies.

Initial Response Stage

22.3 Where the Information Officer intends to disclose a record that the Head of the Public Authority has reason to believe might contain information that falls within section 23 (personal information), section 25 (commercial information), or section 26 (information received in confidence), the Head must notify the third party who provided the information or to whom the information relates (s.39). The purpose of section 39 is to allow a third party to become a formal party to the PATI process. Doing so bestows rights on that party to seek an internal review and a review by the Commissioner, and subsequent rights to seek judicial review of a decision of the Commissioner.

22.4 This notice to the third party (see Appendix X *Sample Letter 10: Notification of third party – Advising a third party their information has been requested*) must indicate the following:

1. a PATI request has been made (without naming the requester);
2. the request for access to information may contain personal information OR commercial information OR information received in confidence that was given by the third party or relates to the third party;
3. a description of the contents of the request;
4. a description of the record and contents concerned;
(Unless the records are voluminous or there are other complicating factors, it is often helpful, for the sake of clarity, to provide a copy of the records intended for disclosure to the third party along with this notice.)
5. the intent to disclose;
6. the timeframe of 14 days after the notice is given for a response from the third party either consenting to the disclosure or presenting a written representation why the information should not be disclosed; and
7. a statement that the Public Authority is required to take into consideration any representations made by a third party before making a final decision to disclose or not.

22.5 If a notification is sent to a third party, the Information Officer must also advise the requester by sending them a notice (see Appendix IX *Sample Letter 9: Notification of third party – notice to requester*).

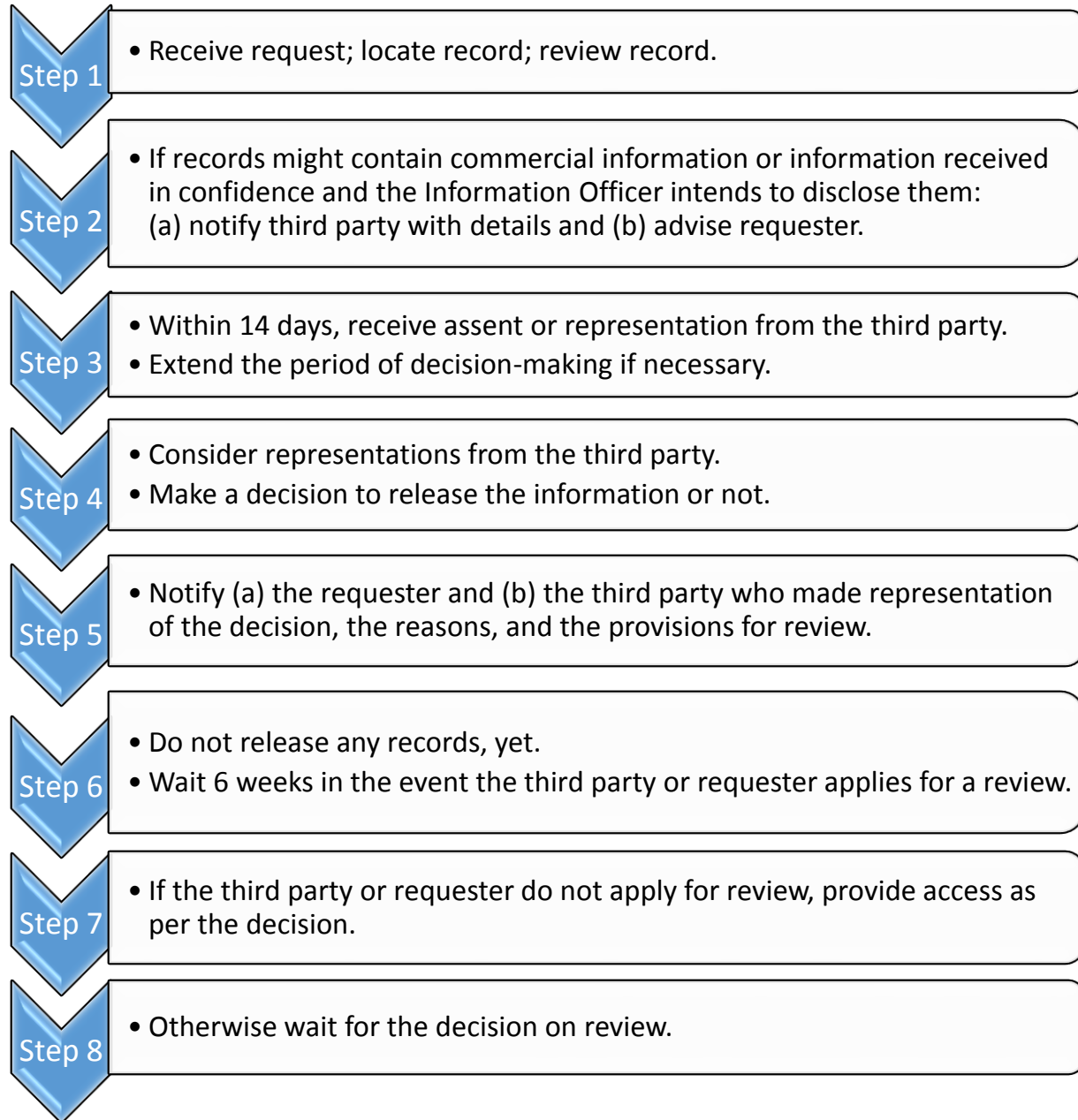
22.6 The Information Officer must consider any representations made by a third party before making a decision whether to grant or refuse to grant a request for access to a record.

22.7 The Information Officer must ensure that timelines for carrying out third-party notification are adhered to. If necessary, the Information Officer may ask the Head of the Authority to opine that an extension of time is necessary because it is not reasonably practicable to consider the third party submissions within the original time frame. (s.15). Care should be taken so as not to extend the time unnecessarily, as requests must be responded to in a timely manner (12(2)(b)).

22.8 On reaching a decision to grant access or partial access to third party information, the Information Officer must notify the requester in writing of the decision and notify any third party who made representation under section 39. The notice must also indicate that

1. the requester has a right to apply for review;
2. the third party has a right to apply for review;
3. application for review must be made within six weeks of the decision; and
4. for information that might fall with section 23 (personal information), access to the record will be given twelve weeks after the date of the decision without an application for review being made; and for other third party information, access to the record will be given after the six week time period to make application for review has expired without an application being made

Third Party Process – Non-Personal Information

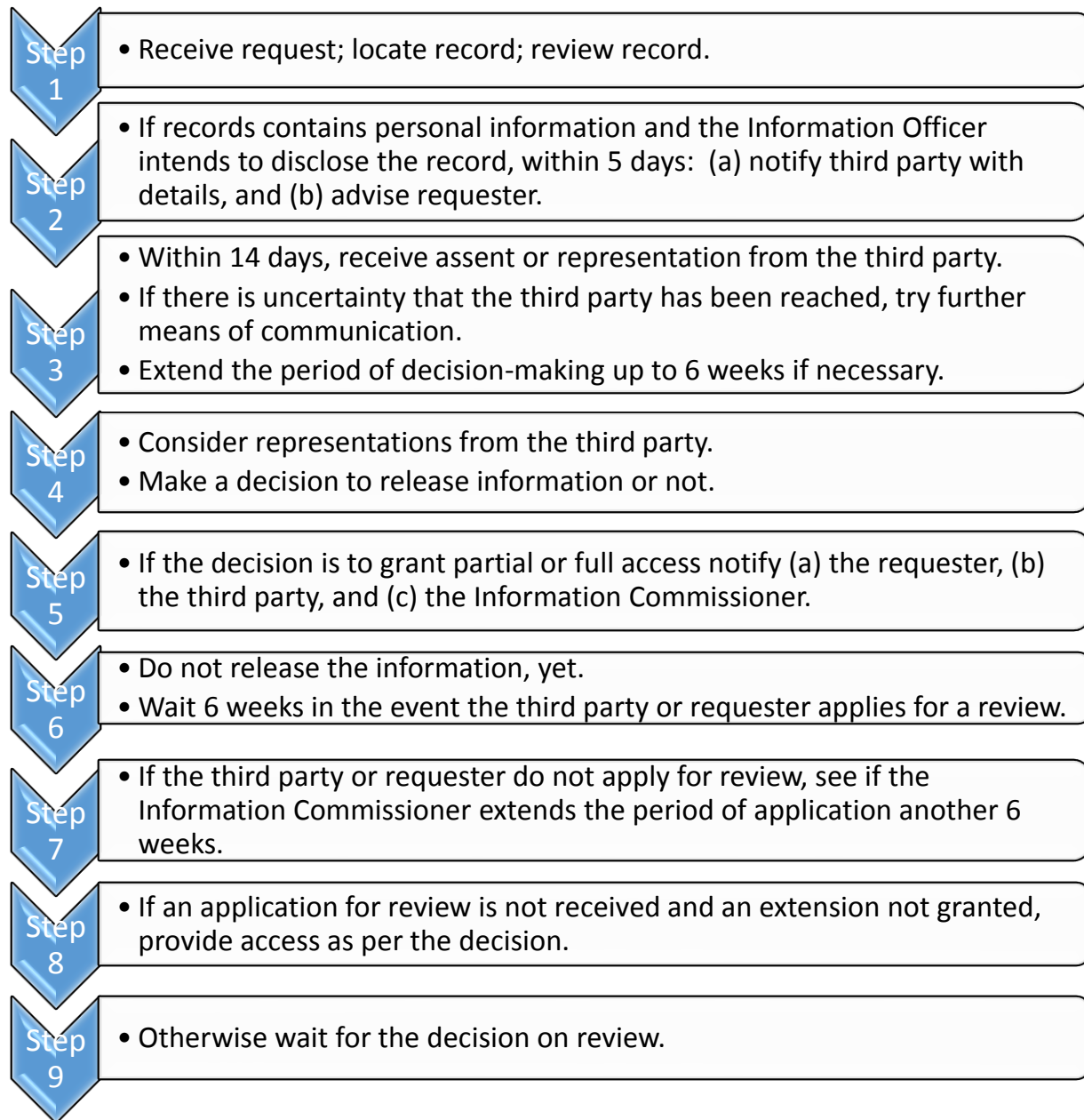


Personal Information

22.9 In addition to the steps above, regarding third party process, the PATI Regulations 10 and 11 articulate further details concerning the release of records which may contain personal information relating to a third party. Some of these include the following:

1. If the Information Officer intends to disclose personal information related to a third party, he must send written notice of the request to the third party within five working days of receiving the PATI request. This written notice should be provided using the process set out in section 39 of the Act (Notice to third parties).
2. If the third party does not respond or make representation within the time specified (14 days) or the Information Officer is not satisfied that the communication has reached the third party, then the Information Officer must make further attempts as are practicable to contact the third party. Other feasible means of communication, such as telephone, fax or email, may be used.
3. An extension of time to reply to the PATI request on the basis of third party notification may be necessary if the third party requests additional time to make a representation or if there has been difficulty in ensuring that the third party has received the notice, or similar circumstances.
4. On reaching a decision to grant full or partial access to personal information, the Information Officer must give a copy of this decision to the Information Commissioner in addition to the requester and the third party.
5. Where the third party is dissatisfied with the decision or any part of it, a review may be requested. If the third party does not apply for review within the six weeks following the notice of a decision, the Information Commissioner may then exercise her power (s.45(2)) to extend the period of application up to six weeks. The record may then be released, but only after the expiry of this additional period.
6. If an Information Officer decides to claim an exemption for the record as a result of representations from the third party, then notice of this decision must be sent to the requester within five working days of the date of the decision. The letter must indicate that the requester has the right to apply for review. (See the section in this Code on [The Review Process](#).)

Third Party Process – Personal Information



Internal Review Stage

22.10 At the internal review stage, the Head of an Authority may decide to disclose additional information that might fall within the exemptions in section 23 (personal information), section 25 (commercial information), or section 26 (information received in confidence).

22.11 The PATI Act does not expressly require the Head of the Authority to provide any third party notification when conducting an internal review. However, when the Head of the Authority issues an internal review decision, the Head must notify any third party concerned of the decision. This category of third parties may be broader than the persons who received third party notification during the initial response.

22.12 In some circumstances, no third party notification may have been made earlier in the process, yet the Head, upon review, decides to release more information. This could occur, for example, if the Head decides that although a section 25 exemption is engaged, the Head disagrees with the Information Officer's decision on the public interest. The Head may determine during the internal review that the public interest requires disclosure of the information. Because the Information Officer did not intend to disclose the information, no third party notification was made during the initial response.

22.13 In the interest of fairness, the Head of the Authority should notify any concerned third party and give them an opportunity to consent or make submissions at the internal review stage. The question of formal notice and an opportunity to consent or make submissions only arises when the Head of the Authority determines that disclosure should be made and the information might fall within section 23 (personal information), section 25 (commercial information), and section 26 (information received in confidence). Any submissions from concerned third parties must be considered.

22.14 When the Head of an Authority subsequently issues an internal review decision, the Head must notify the concerned third party of the internal review decision and the right to a review by the Information Commissioner.

Additional Considerations

22.15 Information Officers, their delegates, and Heads of Authorities should ensure they have a clear understanding of section 23 (personal information), section 25 (commercial information), and section 26 (information received in confidence). This understanding will enable them to correctly balance the need to afford the public with access to public records to the greatest extent possible with the need to protect the rights of others. Assistance from the PSS or legal advice should be sought when necessary.

22.16 If additional exemptions are involved and the information is properly withheld under an exemption other than section 23, 25 or 26, the concerned third party does not require notice and an opportunity to consent to disclosure or make submissions.

22.17 Remember that any third party communications must safeguard the requester's confidentiality unless consent to disclose the requester's identity has been obtained. Public authorities should document any such consent in writing.

22.18 In the interest of fairness, requester communications should safeguard the third party's information unless and until the decision is reached to release the information, subsequent to all appropriate steps being taken.

22.19 This process is distinct from any informal consultation with another person for the purposes of seeking clarification or obtaining factual or technical information. It is also important to note that while a person may have an interest in a matter, this does not automatically mean that the person has a third party interest that might fall within section 23, 25 or 26.

23. PERSONAL INFORMATION

23.1 The Personal Information Protection Act 2016 (PIPA) is intended to regulate the use of personal information by organisations in a manner which recognises both the need to protect the rights of individuals in relation to their personal information and the need for organisations to use personal information for legitimate purposes. At present, select sections of PIPA are enacted. When PIPA becomes fully operational, it will impact both requests for one's own personal information and requests for any third party information. Consequentially, the PATI Act and this Code are anticipated to change.

23.2 At this time, the PATI Act allows individuals to make request for access to their own personal information. The following information guides the process for responding to requests for personal information and for amending personal information as specified by the PATI Act.

23.3 Persons who are applying for access to their personal information must provide photo identification. Where the requester is not the person to whom the personal information relates, then the requester must provide proof of his authority to have access to the information (reg.12). Such proof includes but is not limited to

1. a power of attorney;
2. a court order;
3. probate or letters of administration; or
4. written authority by a next of kin of the person to whom the information relates to apply for and gain access to the information.

23.4 Where an Information Officer receives a request for information or records that may disclose a third party's personal information, the Information Officer must first refer to the definition of personal information in section 24 of the Act to determine if the information relates to an identifiable individual. They must then check that the information is not excluded by section 24(2). If it is confirmed that the requested information is personal information, then the Information Officer must check if any of the exceptions in section 23(2) prevent the exemption from applying. If the personal information exemption applies, then the Information Officer must conduct the specific public interest test in s.23(6) (see the section in this Code on [Public Interest Test](#)), and determine if the personal information is to be disclosed. If disclosure is decided, the process for third party notification must be followed. (See the section in this Code on [Third Party Information](#).)

23.5 Where a parent or guardian of a child, under the age of eighteen years, applies for access to the personal information of that child, they will be granted access without obtaining the consent of that child. Exceptions are made in two instances. If, in the opinion of the Information Officer, the child's information is not ordinarily made available to a parent in the normal course of dealing with the Public Authority or, after consultation with the Director of Child and Family Services, the granting of access to such information would not be in the best interest of the child, then access may be refused (reg.21).

Amending Personal Information

23.6 Individuals may request amendments to their records held by a Public Authority particularly where the information held is incomplete, incorrect or misleading (s.19).

23.7 The request must be made in writing by or on behalf of the person to whom the information relates. The requester must provide sufficient details to specify the record concerned, the amendment requested and include appropriate information in support of the request. The details are set out in reg.14, schedule 3, and include:

1. Name and address of requester;
2. Account Number or File Number of the record, or any other details to assist the Public Authority to identify the record concerned;
3. Dates of entry to be amended;
4. Type of entry to be amended;
5. An explanation of how the entry is incorrect or incomplete;
6. A suggestion of what the entry should say to be accurate or complete; and
7. The signature of the requester.

23.8 The Public Authority must acknowledge receipt of the request within five days and decide whether to grant or refuse the request within six weeks. An extension of a further six weeks is allowed for if compliance within the original period is not reasonably practicable. Reasons for the extension must be given in writing to the requester before the original period of six weeks is expired.

23.9 If the decision is to refuse the request, the response to the requester must specify the reasons for refusal. If the decision is to grant the request, the Public Authority will then specify to the requester the manner of amendment and will ensure the record is amended

1. by altering it so as to make the information complete or correct or not misleading, as the case may be;
2. by adding to the record a statement specifying in what respect the information is incomplete, incorrect or misleading; or
3. by deleting information from the record.

23.10 Further details on the manner of amending or annotating personal records is provided in reg.15 and 16, respectively.

23.11 Fairness to the individual suggests that the final aim should be to ensure that the record in use appears as a correct, unedited original and that documentation is kept under seal of the correction made through the PATI process.

23.12 As a first step, the original paper records should be corrected in a 'red-lined' or track changes manner. An insertion on the red-lined copy should be made to indicate "Amended on [date] under section 19(1) of the PATI Act 2010". The red-lined original should then be sealed, i.e., placed in an envelope and closed with instructions to leave it closed unless there is reason to access it.

23.13 A correct clean copy of the paper record should then be accessible in the file.

23.14 Regulations 15(4) requires, at a minimum, that if the incorrect information is found in a specific place, a reference should be added to the file location to indicate where the correct information can be found. This minimum requirement still risks negative consequences for an individual who successfully sought to amend the record. It will be apparent to those who view the incorrect record that a corrected record exists as a result of the PATI process.

23.15 Better practice is to seal the original marked up record and store it as appropriate. The accessible working record for all involved should be a clean copy of the corrected record. This affords maximum fairness to the individual, who will now have the corrected personal information in a record held by a public authority, without any indication of the correction process.

23.16 A similar process can be applied to electronic records.

23.17 Public authorities may also want to consider retrieving any copies of the original record that have been sent to others, destroying these copies, and sending the clean corrected record as a replacement.

23.18 If requested to do so by the requester, the Public Authority will provide the requester with evidence that the record has been amended.

23.19 The notification of the decision to the requester must also indicate the provisions in the Act regarding a review or appeal of the decision. No fee is payable for a request to amend personal information.

24. FEES

24.1 The aim of PATI is to give the public the right to obtain access to a record, and it is for that reason that there are no fees required simply for making a PATI request, s.20(2). A Public Authority can however charge fees, (reg.13), depending on the [manner of access](#) requested. The table below lists the fees chargeable under PATI, as taken from Head 53 of the [Government Fees Regulations 1976](#).

Head 53			
Public Access to Information Act 2010			
	Service		Fee
1	Photocopy	(a) Black and white copy (all sizes)	\$1.00 per page
		(b) Colour copy (all sizes)	\$1.00 per page
2	Photographs	(a) Black and white and colour (digital photographic print from digital file, scanned hardcopy or existing negative)	\$1.00
		(b) Black and white (photocopy or standard print out)	\$1.00
		(c) Colour (photocopy or standard print-out)	\$2.00
3	Video Duplication		Actual Vendor Costs plus 25% administrative fee
4	Conversion of an analogue audio or video record (e.g. tape or reel-to-reel) into digital MP3 or DivX file format		Actual Vendor Costs plus 25% administrative fee
5	Copy of a microfilm positive reel		\$75.00
6	Microfilm print-out black and white copy (all sizes)		\$1.00 per page
7	Conversion of a microfilm record into a digital JPEG file format		Actual Vendor Costs plus 25% administrative fee

8	Print-out of a digital document or database report black and white copy (all sizes)	\$1.00 per page
9	Provision of a digital record (text or image) in standard PDF, JPEG or TIF file format:	
	(a) by email	No Charge
	(b) by digital storage apparatus (e.g. flash drive, CD, hard drive)	Actual cost of the apparatus incurred by the public authority
10	Conversion of a paper record (text or image) into digital PDF, JPEG or TIF file format	Actual costs of the apparatus incurred by the public authority
11	Digital text files converted to audio formats for visually impaired	Actual costs incurred by the public authority

24.2 Where the Public Authority determines that fees are appropriate to assign, they must:

1. Advise the requester of the amount of the fees, how the fees were calculated and the method of payments accepted by the Public Authority (i.e. cash, check, credit card, etc.). The Public Authority should also inform the requester that the fee shall be paid before access is granted.
2. Offer the requester the opportunity to refine the request with the aim of reducing or eliminating the amount of fees payable and assist them in this process if required. For most access requests, fees can be eliminated by providing the information electronically to the requester with his or her consent.
3. Ensure the requester is aware of the timeline associated with the collection of fees (30 days), and that if payment is not received within that timeframe, the request will be withdrawn. The requester can however ask for an extension of time to be granted by the Information Officer as he may deem appropriate.

24.3 The decision-making process and the cost of redacting relevant but exempt information may not be taken into consideration when calculating fees. No fees are payable for those records that are to be inspected on the premises of a Public Authority, (reg.13(2)).

24.4 It may be necessary to recalculate fees at any time to reflect the number of actual records being released.

24.5 Where the requester is unable or unwilling to pay the fee, the Information Officer should consider whether there is any information related to the request that can be released free of charge.

24.6 The response to the request, i.e. the information available to be disclosed, will be withdrawn if, within thirty working days of receipt of notification of fees, the requester fails to:

1. respond;
2. set an appointment for inspection; or
3. present himself at the Public Authority to receive copies of the record.

25. TRACKING SYSTEM

25.1 The Government has provided a tracking system that can be used by Public Authorities for the logging of all requests. This information is used to provide a written report to the Commissioner (s.58(3)) at the end of each calendar year. It contains the information on the number of PATI requests, decisions made and reviews conducted as it pertains to that Public Authority. This information enables the Information Commissioner to fulfil her statutory obligation to prepare an annual report on the operation of the Act and to lay it before the House of Assembly. There are a number items for inclusion, as follows:

1. the number of PATI requests made and how they were disposed of;
2. the number of requests made to amend records of personal information and how they were disposed of;
3. the number of times that exemptions were invoked by Public Authorities, by category;
4. the number of applications made for internal review and how they were disposed of;
5. the number of applications for review by the Commissioner and how they were disposed of; and
6. the number of applications made under for judicial review and the status or result of such applications.

25.2 An electronic register is required to be maintained, (reg.20). The government tracking system is one available option. Public authorities can use their own electronic system to collect information on requests which must include, but is not limited to:

1. an application number (to be assigned);
2. the name of the requester;
3. the date of receipt;
4. a summary of the request;

5. the date the response was sent to the requester;
6. the decision to grant or deny access;
7. a summary of the information provided;
8. where the request was refused, the reason for the refusal including the specific clause in the Act and reasoning; and
9. whether an internal review was filed and the outcome of that internal review.

25.3 The information collected in the tracking system should enable the Public Authority to generate a log of all requests made under the Act, (s.6(2)). This log should indicate whether a request has been granted or refused and, in the case of a refusal, the log shall include the reasons for refusal. This log shall be made available to members of the public upon request, together with any information that has been provided pursuant to a request that has been granted. If and when it is made available to the public, care must be taken to ensure that it does not include the name of the requester or any other identifying information.

25.4 In addition, the Information Officer is strongly advised to document all correspondence and track all steps taken to appropriately fulfill requests. There may be occasions when a PATI request is subject to a review by the Head of the Authority and/or the Information Commissioner. Documentation of the details of the process, the steps taken, the correspondence shared and the information distributed to a requester can become critical components of demonstrating 'every reasonable effort' towards compliance.

26. THE REVIEW PROCESS

26.1 Where a requester or a third party is not satisfied with a decision of an Authority or a failure of the Authority to take an action as required under the Act, then the Act allows the requester or third party to apply for a review. The process is described below.

Internal Review

26.2 The requester or a third party applies in writing to the Public Authority for the Head of a Public Authority concerned to review of any decision made or action not taken by the Authority with respect to a PATI request, (s.41). This is referred to as an internal review.

26.3 Internal reviews may be requested on the following:

1. a decision to grant or refuse to grant access to a record;

2. a decision as to the manner in which access to a record requested is to be provided;
3. a decision to transfer a request to another Authority, in whole or in part;
4. a decision to extend the time limit for compliance with a request;
5. a decision as to the fee charged for access to a record;
6. a decision to refuse a request to amend a record in respect of personal information;
7. a decision to refuse to disclose the existence of a record; and
8. a failure to do anything relating to a request within the time required by the Act.

26.4 The requester or third party has six weeks from the date of notification of the decision of the Authority to make an application for review of that decision. If the application for review is because of the failure by a Public Authority to take action within the time required by the Act, then the application must also be made within six weeks of the date when the Authority was required to take action. In either case, the Public Authority may exercise discretion and extend the period for making an application for internal review, (s.42).

26.5 The Head of the Public Authority concerned conducts the internal review of a decision, unless the decision under review was made by the Head, (s.43). If this is the case, the Public Authority refers the application for review to the Information Commissioner, (s.44), and, within five working days of receiving this application, notifies the applicant that it has been referred to the Commissioner under s.44 and that it will be treated as an application under Part 6 Review by Information Commissioner.

26.6 If the internal review is to proceed under the Head of the Public Authority, then the Head has up to six weeks after receiving an application for an internal review to complete the review and make a decision, (s.43). The Head can receive support when conducting the review. The Head must notify the requester and/or any third party concerned of:

1. the decision and the reasons for the decision; and
2. the right of the requester or third party, as the case may be, to apply to the Commissioner for a review of the decision.

Independent Review by the Information Commissioner

26.7 In the event the requester or third party is not satisfied with either the internal review decision by the Head of the Public Authority or the failure of the Head to make an internal review decision within the six week timeframe, they may apply in writing to the Commissioner for a review. This application must be made in writing within six weeks after being notified of the

internal review decision or of the date when the internal review decision was required to be completed. The Commissioner may use her discretion and extend this period of application.

26.8 Upon receipt of an application for a review, the Commissioner may attempt to have the matter voluntarily resolved by negotiation, conciliation, mediation or otherwise, (s.46), or may decide to review the matter herself, (s.47).

26.9 If the Commissioner decides to review the matter, she will determine the procedure to be followed, conduct the review in private and ensure reasonable opportunities for representations from the requester, the Public Authority and if necessary any relevant third party, (s.47). The Commissioner's procedures are published in the [ICO's Review Handbook](#), which may be found on the Commissioner's web site.

26.10 In conducting a review, the Commissioner has the power to summon persons, compel them to give evidence, administer oaths and affirmations, enter premises, converse with any person on the premise, carry out inquiries, and examine records of Public Authorities, (s.56). Failure or refusal to comply or obstruction of these Commissioner's functions is an offence and may result in a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or both.

26.11 As soon as is practicable, the Commissioner will complete the review and make a decision. She will then notify the requester, the Public Authority and if necessary any relevant third party of the decision, the reasons for it and the period for effecting the decision. This decision may affirm, vary or reverse the decision of the Public Authority that was under review. In addition, she may make other orders in accordance with the Act as she considers appropriate, (s.48).

26.12 A decision of the Commissioner is binding on all persons affected by it, subject to Judicial Review. Once the decision has been filed with the Registrar of the Supreme Court, it has the effect of an order of the Supreme Court and is enforceable in the same manner as an order of the court.

Judicial Review

26.13 Where any person, including any Public Authority, is aggrieved by a decision of the Commissioner they may apply to the Supreme Court for a review of the decision, (s.49). The Court, after considering the application, may confirm, vary, remit or set aside the decision. This

judicial review shall be heard and determined by a judge in chambers unless the Court, with the consent of the parties, directs otherwise.

E. APPENDICES

APPENDIX I Sample Letter 1: Acknowledging receipt of request

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010 – Acknowledgement of receipt of request

Thank you for your request dated [insert date of application], received on [insert date of receipt].

We will undertake the necessary research in order to respond to your request within six weeks from the date of receipt of your request.

You will be notified in writing if it becomes necessary to extend the original period of 6 weeks by a further period up to six weeks in order to properly process your request.

If you do not receive a response to your request within 6 weeks, or before the expiration of any extended period, you have the right to an internal review by the head of the public authority of the failure by the public authority to respond as required. A request for an internal review must be made in writing and can be sent to [contact information].

Do not hesitate to contact me if you have any queries about this letter. Please ensure that you quote the reference number above in any future correspondence.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX II Sample Letter 2: Request for further information needed to process request

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010: Request for Further Information

Thank you for your request dated [insert date of application], received on [insert date of receipt].

Your request was made in the following terms:

[provide details of the request as per the application]

Your request does not identify or provide sufficient details to identify the record(s) you require.

[Explain why the record(s) cannot be identified].

To help process your request, we are offering to discuss what types of records we have and what information you are looking for to see if we can better identify what you are requesting. In particular, it would be helpful to discuss [give the requester an indication of the type of information that you require in order to process the request].

Therefore please contact me so we can discuss the records the [Public Authority] has and clarify what you are requesting. It is important that we talk or meet by [date] so that your request is handled in a timely manner.

Do not hesitate to contact me if you have any queries about this letter. Please ensure that you quote the reference number above in any future correspondence. If a reply is not received by [date], this may result in denial of this request on Administrative Grounds s.16(1)(b).

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX III Sample Letter 3: Notice of transfer of request

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010 – Transfer of Request

Thank you for your request dated [insert date of application], received on [insert date of receipt].

The record(s) requested is/are not held by [insert name of public authority] OR is/are held by more than one public authority. Your application has therefore been transferred to the public authority indicated below, which holds the record(s) OR whose functions are most closely related to the subject matter of the request:

Public Authority: (Name of Public Authority)

Information Officer: (Name of Information Officer of receiving public authority)

Contact Information:

Address:

Tel No:

Email:

Date of Transfer: (Date)

Accordingly, all future communication pertaining to this request will come from the [insert name of the public authority identified above].

Please note that under section 41 of the Public Access to Information Act 2010, a requester has a right to a review of a decision to transfer a request to another public authority, in whole or in part. Please send your written request for a review to [contact info].

Yours sincerely,

Head of Public Authority,

[Name, address, email address, and telephone number]

APPENDIX IV Sample Letter 4: Extension of time to process request and reasons

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010 – Notification of Extension of Time to Process Request

Thank you for your request dated [insert date of application], received on [insert date of receipt].

Your request was made in the following terms:

[set out the request]

Unfortunately, it is taking longer than expected to respond to your request. Therefore, the period for responding has been extended for a further [insert number of] days/weeks [up to six weeks maximum] from [insert date], which is the date on which you should have originally received a response.

The reason for this extension is that [pick one]:

- (a) there is insufficient time to consider representations made by third parties; or
- (b) there is insufficient time to complete any consultations with regard to whether granting access to the information requested is in the public interest; or
- (c) dealing with the request within the original period of six weeks would substantially or unreasonably interfere with the day to day operations of [insert name of public authority].

This is because [explain why].

You will be provided with notice of our decision no later than [insert date 6 weeks from date requester should have originally received a response].

Please note that under section 41 of the Public Access to Information Act 2010 you have a right to a review by the head of the public authority of any decision made by the authority with respect to a request or of any failure by the authority to take any action that it is required to take under the Act in respect of a request. This includes:

- (a) a decision to extend the time limit for compliance with a request; and
- (b) a failure to do anything relating to a request within the time required by the Act.

Please send a written request for a review to [\[contact information\]](#).

Do not hesitate to contact me if you have any queries about this letter. Please ensure that you quote the reference number above in any future correspondence.

Yours sincerely,

Information Officer

[\[Name, address, email address, and telephone number\]](#)

APPENDIX V Sample Letter 5: Informs applicant that information is already available – Not processed under the PATI Act

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Availability of Records

Thank you for your email/letter dated [insert date of application], received on [insert date of receipt] asking for [describe].

These record(s) is/are readily available and a Public Access to Information (PATI) request is not necessary to get copies. It/They may be obtained from:

[name of public authority, address, phone number, email address]

OR

[website from which the record(s) can be viewed and/or downloaded]

OR

[other source where record(s) may be available; include location or contact information]

If you would like further information or still need to file a PATI request, please do not hesitate to contact me.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX VI Sample Letter 6: Grant of access to a record

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010 – Grant of Access to Record

Thank you for your request dated [insert date of application], received on [insert date of receipt]. [Name of public authority] is pleased to grant you access to the following requested record(s): [describe record(s) requested in the application].

[Chose one of the following responses]

Please find enclosed the copy/copies of the record(s) which you requested. Do not hesitate to contact me if I can provide further assistance.

OR

You requested to [examine/view/listen to] the original record. You are invited to do so at [address] on [date] at [time]. Please contact me to confirm if this date and time is convenient for you. There is no fee for inspecting the record(s) at this office.

OR

You requested a copy/copies of the record(s). A fee of \$_____ is payable prior to access to the record(s) being provided. The fee represents [insert reason for charge]. Please make arrangements to pay the fee at the office of [insert name of public authority] or at the Government cashiers located on the ground floor of the Government Administration Building, 30 Parliament Street, Hamilton. Payment must be made within 30 working days of this notice or the request will be deemed withdrawn according to Regulation 13 of the Public Access to Information Act 2010.

Upon payment, the copy/copies of the record(s) will be available for collection at [address of public authority] between the hours of [opening days and times of the public authority]. The receipt for payment of fees must be presented in order to receive this access.

[When appropriate] I can also discuss sending you an electronic copy of the records at no charge if you would like to consider that option.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX VII Sample Letter 7: Notice of refusal on administrative grounds

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010 – Notice of Refusal of Request on Administrative Grounds

Thank you for your request dated [insert date of application], received on [insert date of receipt].

Please be advised that your request for information has been carefully considered. Unfortunately, the record that you have requested does not exist after all reasonable steps have been taken to find it. [Name of public authority] does not hold the record(s) you have requested and, to our knowledge, the record is not held by any other public authority - s.16(1)(a). [Detail for the request the reasonable steps taken to locate the records or the basis for the conclusion that the record does not exist.]

OR

The record requested cannot be found after all reasonable steps have been taken to find it – s.16(1)(a). [Detail for the requester reasonable steps taken to locate the record.]

OR

In the opinion of the head of the public authority, granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the public authority – s.16(1)(c). [Include for the requester detailed particulars of the substantial and unreasonable interference with and disruption of work as required by regulation 9.]

OR

Publication of the record is required by law [insert name of the legislation] and is intended to be effected not later than three months after the receipt of the request by the public authority – s.16(1)(d).

OR

The request is, in the opinion of the head of the public authority, frivolous or vexatious – s.16(1)(e).
[Include detailed particulars.]

OR

The information requested is in the public domain and is reasonably accessible or available to the public on request under [name statutory provision] free of charge/on payment [pick one] s.16(1)(f).
[Provide details of how the requester can access the information, i.e., the website.]

Under section 41 of the Public Access to Information Act 2010, a requester has a right to a review by the authority of any decision made by the authority with respect to a request or of any failure to take any action required under the Act in respect of such a request including a decision to grant or refuse to grant access to a record. To make a written request for a review, please contact [contact information].

Please quote the reference number provided above in any future correspondence on this matter.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX VIII Sample Letter 8: Informs applicant request is denied.

A. QUALIFIED EXEMPTION

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010: Decision Notice

Thank you for your request dated [insert date of application], received on [insert date of receipt].

After careful consideration and the administration a public interest test, it has been determined that the record(s) requested will be regrettably denied on the grounds of [state grounds (exemption) for refusal], pursuant to section [state section of the act related to exemption] of the Public Access to Information Act 2010.

[Provide reasoning, details and factual evidence justifying the application of the exemption.]

[Provide details of the public interest test considerations, including arguments for and against disclosure. Explain rationale for decision specifying why it was in the best interest for the record(s) not to be released.]

Under section 41 of the Public Access to Information Act 2010 (the Act), you have a right to an Internal Review of a decision regarding your request.

If you wish to request an Internal Review, you have 6 weeks from this notification per section 42 of the act. The request should be made in writing to [insert name of public authority] and include:

- (a) your name, address and telephone number;
- (b) a copy of your application and/or the reference number assigned to your application;
- (c) a copy of this letter; and
- (d) if so inclined, the basis on which you are requesting a review of the decision indicated.

If upon Internal Review, the decision is still not favourable to you, you have the right under section 45 of the Act to a review by the Information Commissioner of:

- (a) any decision made by the head of a public authority on an internal review, within 6 weeks after being notified of that decision; or

(b) any failure by the head of a public authority to make a decision on review, within 6 weeks after the date when the decision was required to be made.

If you wish to request a review by the Information Commissioner, you have 6 weeks from the receipt of the internal review decision. The request should be made in writing to the Information Commissioner at Valerie T. Scott Building, 60 Reid Street, Hamilton HM 12 or info@ico.bm.

If you have any queries about this letter please contact me and ensure that you quote the reference number above.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

B. ABSOLUTE EXEMPTION

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010: Decision Notice

Thank you for your request dated [insert date of application], received on [insert date of receipt].

Your application has been regrettably denied as the record(s) requested is an (are) exempt record(s) pursuant to section [insert relevant section from the Act] of the Public Access to Information Act 2010.

[Provide reasoning, details and factual evidence justifying the application of the exemption.]

Under section 41 of the Public Access to Information Act 2010 (the Act), you have a right to an Internal Review of a decision regarding your request.

If you wish to request an Internal Review, you have 6 weeks from this notification per section 42 of the act. The request should be made in writing to [insert name of public authority] and include:

- (a) your name, address and telephone number;
- (b) a copy of your application and/or the reference number assigned to your application;
- (c) a copy of this letter; and
- (d) if so inclined, the basis on which you are requesting a review of the decision indicated.

If upon Internal Review, the decision is still not favourable to you, you have the right under section 45 of the Act to a review by the Information Commissioner of:

- (a) any decision made by the head of a public authority on an internal review, within 6 weeks after being notified of that decision; or
- (b) any failure by the head of a public authority to make a decision on review, within 6 weeks after the date when the decision was required to be made.

If you wish to request a review by the Information Commissioner, you have 6 weeks from the receipt of the internal review decision. The request should be made in writing to the Information Commissioner at Valerie T. Scott Building, 60 Reid Street, Hamilton HM 12 or info@ico.bm.

If you have any queries about this letter please contact me and ensure that you quote the reference number above.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX IX Sample Letter 9: Third Party Notification – notice to requester

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010 – Notification to Third Party

Thank you for your application dated [insert date of application], received by us on [insert date of receipt].

I have considered your application and the record requested is believed to contain **personal information/commercial information/information received in confidence [pick one or more]** held by this public authority. Before I can determine your application, I must obtain the views of the other person(s) to whom this information relates and I am required, under the Public Access to Information Act 2010 to give him/her a period of 14 days to respond. Therefore, there will be some delay before a final decision is made regarding the record(s) you requested in your application.

Note that your name has not been provided to the third party, only a description of the requested records.

If you have any queries about this letter please contact me and ensure that you quote the reference number above.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX X Sample Letter 10: Third Party Notification – Advising a third party their information has been requested

[Letterhead of Public Authority]

Reference Number:

[Name of third party]

[Address of third party]

[Date]

Dear [Name of third party],

Re: Public Access to Information Act 2010 – Notice to third party (section 39)

Please be advised that a request for information has been received by the [name of public authority] which is being considered under the Public Access to Information Act 2010 (the Act). The information/part of the information requested [was provided by/relates to] you.

The Act requires public authorities to disclose information in response to a request unless an exemption applies and the public interest favors keeping the information confidential.

As we intend to disclose the record requested, that might contain **personal information/ commercial information/ information received in confidence** [pick one] we are informing you of this request [in light of the fact that you provided this information to us / in light of your interest in this information] as required by section 39 of the Act.

The contents of the record include: [describe the contents of the record].

Within 14 days after the date of this notice, you may consent in writing to the disclosure of the record or make written representations to this public authority with regard to the intended disclosure addressed to:

[name, address, email address and telephone number of public authority]

Please notify us of any particular issues or considerations that you consider to be relevant to the issue of disclosure of this information. All relevant factors will be taken into account when making the decision on whether the information is required to be disclosed, in particular the relevant public interest considerations both in favour of and against disclosure.

The [name of public authority] is required to consider any representation you make with regard to the request before making a decision under section 14 whether to grant or refuse to grant a request for access to the record.

I would be grateful if you could respond to me by [date] to enable the [public authority] to consider all relevant factors in taking a decision on whether the information requested should be disclosed.

As a third party notified under section 39 of the PATI Act, you will be notified of the response to the PATI request.

You also have a right to review. Under section 41 of the Public Access to Information Act 2010 (the Act), you have a right to an Internal Review of a decision regarding this request.

If you wish to request an Internal Review, you have 6 weeks from the notification of the decision per section 42 of the act. The request should be made in writing to [\[insert name of public authority\]](#) and include:

- (a) your name, address and telephone number;
- (b) a copy of your application and/or the reference number assigned to your application;
- (c) a copy of this letter; and
- (d) if so inclined, the basis on which you are requesting a review of the decision indicated.

If upon Internal Review, the decision is still not favourable to you, you have the right under section 45 of the Act to a review by the Information Commissioner of:

- (a) any decision made by the head of a public authority on an internal review, within 6 weeks after being notified of that decision; or
- (b) any failure by the head of a public authority to make a decision on review, within 6 weeks after the date when the decision was required to be made.

If you wish to request a review by the Information Commissioner, you have 6 weeks from the receipt of the internal review decision. The request should be made in writing to the Information Commissioner at Valerie T. Scott Building, 60 Reid Street, Hamilton HM 12 or info@ico.bm.

If you have any queries about this letter, please contact me and ensure that you quote the reference number above.

Yours sincerely,

Head of Public Authority

[\[Name, address, email address, and telephone number\]](#)

APPENDIX XI Sample Letter 11: Non-payment of fees

[Letterhead of Public Authority]

Reference Number:

[Name of requester]

[Address of requester]

[Date]

Dear [Name of requester],

Re: Public Access to Information Act 2010: Non-payment of fees

Further to our letter dated [insert date of decision notice letter] advising you of the fee payable to obtain a copy(ies) of the record(s) you requested on [insert date of request], you are advised that the payment requested has not been made.

Please note that under section 20(3) of the Public Access to Information Act 2010, access to the record requested shall not be provided until the fee in respect of the provision of access has been paid.

Optional: [If you are unable to pay the requested fee, kindly contact this office to confirm a date and time that is convenient for you should you wish to inspect the record(s) instead. There is no fee for inspecting record(s) at this office.] or [If you are unable to pay the requested fee, kindly contact this office if you would prefer to receive an electronic copy of the records. There is no fee for electronic records.]

If you have any queries about this letter please contact me and ensure that you quote the reference number above.

Yours sincerely,

Information Officer

[Name, address, email address, and telephone number]

APPENDIX XII Checklist for Preparing a Decision Letter

Background

Section 14(2) of the Public Access to Information Act 2010 (the Act) requires a public authority, immediately after a decision has been made, to give notice in writing of the decision to the requester and to any third party who made representations under section 39 of the Act specifying-

- (a) the reasons for the decision, including findings on any material issues relevant to the decision and particulars of any matter relating to the public interest taken into consideration for the purposes of the decision; and**
- (b) the provisions of the Act regarding review and appeal of the decision.**

STEP 1 – Scope

- Ensure decision letter reflects the request as made by the requester.
- If necessary include details of correspondence/conversations with the requester to clarify scope or amend scope (dates and what was agreed) of request.
- If the request was transferred to another public authority under section 13(5) of the Act, state when and to whom and which part of the request, if not transferred, is being dealt with by this public authority.

STEP 2 – Authorization

- Ensure letter contains the information officer's authority to make the decision.

STEP 3 – Legislative basis for decision

- Ensure that either in the body of the letter outlining the decision, or as an attachment, each section of the Act relied upon is set out so the requester knows the actual text of each section that is referenced.

STEP 4 – Evidence/Material upon which findings are based

- Identify what the records are and where they are located.
- Identify other material relied on to make the decision i.e. submissions by the applicant, third parties, etc.
- Policy or procedural material, guidelines, handbooks or memos relied on by the decision-maker where relevant.
- Other factors, evidence, documents etc. taken into account when making the decision.

STEP 5 – Decision

- Set out the decision.
- Where applicable, review the ICO Guidances for the requirements for each exemption. Note that most sections in the Act contain multiple exemptions. For example, the commercial information exemption in section 25 contains four different exemptions.

- You must clearly identify which specific exemption you are relying on and then make sure you understand the requirements to apply that exemption.
- Explain your reasons, describing or listing factual support or documentation. Opinions or speculation will not be sufficient to justify using the exemption.
- If the section 37 exemption is used set out why disclosure of the record is prohibited under other legislation currently in effect.
- Set out the reasons why each record requested meets the criteria for an exemption under the Act i.e. documents are submissions prepared for Cabinet and, therefore, are exempt from disclosure under section 27 of the Act.
- Set out exemptions in the alternative where more than one exemption is applicable to the record.
- Set out the legislative basis for the decision i.e. a record is exempt under s.27 of the Act, if it is a document that has been submitted to the Cabinet for its consideration etc. using the language of the section for clarity.
- Set out evidence/findings/documentation to substantiate the claim for an exemption i.e. “I have considered submissions made by third parties in relation to the disclosure of their personal information. These parties objected to disclosure of the record on the grounds of (.....) and I find that in those circumstances disclosure of the documents will not be in the public interest.”

STEP 6 – Reasons for decision

- Set out any public interest considerations including the weightings given to each consideration and the findings, i.e. “On balance I considered that the public interest argument in not disclosing outweighs the public interest supporting disclosure.”
- Summarize your findings using the language of the Act. For example, “On the basis of the above I find that the records are records to which section 29(1) of the Act applies and that they are exempt from disclosure for the reasons outlined above.”

STEP 7 – Right to apply for review of decision

- Set out the rights of the requester to apply for an internal review.
- Set out the rights of the requester to apply to the Information Commissioner for a review.

STEP 8

- Sign and date the letter.
- Make sure all attachments are attached and that documents to be released are attached.

APPENDIX XIII Template for Government Notice – Publication of Contract Information

BERMUDA

PUBLIC ACCESS TO INFORMATION (CONTRACTS VALUED \$50,000 OR MORE) **[NAME OF PUBLIC AUTHORITY] NOTICE [YEAR]**

GN / [YEAR]

The [title of head of the public authority] who has supervision of [name of the public authority], in exercise of the power conferred by section 6(6) of the Public Access to Information Act 2010, gives the following Notice:

Citation

1. This Notice may be cited as the Public Access to Information (Contracts Valued \$50,000 or More) [name of public authority] Notice [year].

Contracts to which this Notice applies

2. This Notice applies to the contracts contained in the following Table:

Table

Name of Contractor/ Contracting Parties	Contract Start Date	Contract End Date	Description of Goods/ Services Provided	Contract value

Made this ____ day of [month], [year]

[Name of head of the public authority]

[Title of head of public authority] who has supervision of the [name of public authority]