

# IPONZ guide for Releasing Official Information held under the Patents Act 2013, Patents Regulations 2014 and Official Information Act 1982

The information in this guide only relates to patent applications that are made under the **Patents Act 2013**<sup>1</sup>.

The guiding principle of the Official Information Act (OIA) is that official information must be made available unless there are good reasons for withholding it.

The [Patents Act 2013](#) and [Patents Regulations 2014](#) place some restrictions on what information can be released. Where enactments place restrictions on the release of information, this is a reason for refusal of a request under section 18(c)(i) of the OIA. Section 52(3)(b)(i) of the OIA also specifies that nothing in the OIA deviates from any provision in an Act or regulations which imposes a prohibition or restriction in relation to the availability of official information.

If there is no specific restriction in the Patents Act 2013 or the Patents Regulations 2014, the normal rules of the OIA apply, including the grounds for withholding information set out in [section 6](#) and [section 9](#) of the OIA and the grounds of refusal set out in [section 18](#) of the OIA.

## What information is likely to be able to be released?

The tables on the following pages give an overview of the information that may or may not be released. Additional information is provided in written form at the end of the document.

Release of information generally depends on:

- whether the case is open to public inspection (OPI) or not,
- whether the information is already available, and
- who is requesting the information.

## How do I know which category a case falls into?

Patent applications generally become OPI 18 months after the earliest priority date, under section 76 of the Patents Act 2013. Applications can be open to public inspection earlier if they are accepted, under section 78(2). Treaty applications become OPI when published under Article 21 of the PCT.

If an application is OPI, the “Case Data” section displays an “OPI Date” on the bibliographic page of the case in the online [Patents register](#).

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<sup>1</sup> “The “Bibliographic Data”, “Patent Information” section of an application shows “2013 Act” where this applies. To view this, use the [Search function](#) of the IPONZ online Patents Register.

## Applications that are not open to public inspection

	<b>Applicant or Agent of Applicant</b>	<b>Third parties</b>
<b>Information that is already available</b>	<p>Bibliographical information.</p> <p>All documents filed or issued as part of the patent case.</p> <p><i>These are available via the case management facility.</i></p>	<p>Bibliographic information published under section 80(2), including:</p> <ul style="list-style-type: none"> <li>· Patent number</li> <li>· Date of filing</li> <li>· Convention date &amp; country (if applicable)</li> <li>· Title of application</li> <li>· Applicant</li> <li>· Agent</li> <li>· Journal number</li> </ul> <p><i>This is available via the Patents register.</i></p>
<b>Information that may not be released</b>	<p>Any information for which good reason exists to withhold it under section 6 or section 9 of the OIA.</p>	<p>All information and documents associated with the case that are in the possession of the Commissioner (unless ordered by the Court). <i>This information is withheld under section 80(1) and (4) of the Patents Act 2013.</i></p> <p>Information in respect of which there is an order prohibiting release due to relevance for defence purposes. <i>This information is withheld under section 132 of the Patents Act 2013.</i></p> <p>Any other information held by IPONZ relating to an application not covered by the above reason, but for which good reason exists to withhold it under section 6 or section 9 of the OIA.</p>
<b>Information that may be released</b>	<p>All other information and documents associated with the case that are in the possession of the Commissioner (not covered above).</p>	<p>All other information and documents associated with the case that are in the possession of the Commissioner (not covered above).</p>

## Applications that are open to public inspection (OPI)

	<b>Applicant or Agent of Applicant</b>	<b>Third parties</b>
<b>Information that is already available</b>	<p>Bibliographical information.</p> <p>All documents filed or issued as part of the patent case.</p> <p><i>These are available via the case management facility.</i></p>	<p>Bibliographical information.</p> <p>Documents filed or issued as part of the Patent case released under section 78 and regulation 85, including examination reports, responses to examination reports, and complete specifications.</p> <p><i>These are available via the Patents register.</i></p>
<b>Information that may not be released</b>	<p>Any information for which good reason exists to withhold it under section 6 or section 9 of the OIA.</p>	<p>Any information for which good reason exists to withhold it under section 6 or section 9 of the OIA.</p>
<b>Information that may be released</b>	<p>All other information and documents associated with the case that are in the possession of the Commissioner (not covered above).</p>	<p>All other information and documents associated with the case that are in the possession of the Commissioner (not covered above).</p>

## **Details of the restrictions on the release of information**

### **Documents open to public inspection**

Section 78 of the Patents Act 2013 provides that if a notice is published under s.76 or 77, the specification and other prescribed documents are open to public inspection. These prescribed documents are set out in regulation 85(1), as all documents associated with the application and in possession of the Commissioner.

Section 78 also provides that if a notice of acceptance is published under s.74(2)(b), all documents *except* those prescribed become open to public inspection. These prescribed documents are set out in regulation 85(2), as documents that are subject to legal professional privilege, a court or tribunal order, or that the Commissioner has reasonable grounds to believe should not become OPI.

Section 79 of the Patents Act 2013 provides that a Treaty Application becomes OPI on the day that it is published under Article 21 of the PCT, and prescribed documents become OPI. These prescribed documents are set out in regulation 86 as the application and all documents in possession of the Commissioner associated with the application, but excludes documents that are subject to legal professional privilege, a court or tribunal order, or that the Commissioner has reasonable grounds to believe should not become OPI.

### **Certain documents not to be published**

Section 80(1) of the Patents Act 2013 provides that, except as otherwise provided under the Act, documents of the kind mentioned in section 78 or 79 must not be published by the Commissioner (or any person to whom the Commissioner provides the document in the performance of his or her functions) or be open to inspection, unless ordered by the Court in legal proceedings.

Section 80(4) states that a request made under the OIA 1982 may be refused as it is contrary to the Patents Act 2013, if it would require documents of the kind mentioned in section 78 or 79 to be made available before those documents are open to public inspection.

### **Defence purposes**

Section 132 of the Patents Act 2013 provides that the Commissioner of Patents and the Minister of Defence may give directions in certain circumstances prohibiting the release of information relating to applications for patents that are relevant to defence purposes.

Whilst the directions are in force, the patent application and complete specification must not become open to public inspection.