

Decision Notice

Decision 07/2019: Department of Corrections

Records related to sex offenders: failure to decide within statutory timeframes

Reference no: 20190130

Decision date: 28 February 2019

Summary

On 12 March 2018, the Applicant asked the Department of Corrections for records and information relating to sex offenders. This Decision finds that the Department of Corrections failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information (PATI) Act 2010.

The Information Commissioner has ordered the Department of Corrections to comply with the requirement to issue a decision on the request for an internal review by Thursday, 11 April 2019.

Background

1. This Information Commissioner's Decision is made in the context of a 'failure to decide' case involving an application for review under Part 6 of the Public Access to Information (**PATI**) Act that was received by the Information Commissioner's Office on 30 January 2019.
2. This Decision does not address whether a public authority has properly denied access to a record. Rather, it addresses the basic obligation upon a public authority to respond to a requester within the statutory timeframes.
3. Relevant dates:

Date	Action
12 March 2018	The Applicant made a written PATI request to the Department of Corrections (Department).
	The Applicant did not receive an initial decision on the PATI request within six weeks of the Department's receipt of it, i.e. by 23 April 2018.
26 November 2018	The Applicant requested an internal review be conducted by the head of the public authority.
	The Applicant did not receive an internal review decision within six weeks of the Department's receipt of the request for one, i.e. by 7 January 2019.

30 January 2019	The Applicant requested an independent review by the Information Commissioner.
4 February 2019	The Department was notified in writing that an application had been received from the Applicant. The Department of Corrections was asked to comment on the application.
27 February 2019	The Information Commissioner received submissions from the Department. These submissions are considered below.

Information Commissioner's analysis and findings

Internal Review Decision

1. Section 43(1) of the PATI Act requires the head of a public authority to conduct an internal review. Section 43(2) gives the head of the public authority a maximum of six weeks, after the date of receiving a request for an internal review, to complete the internal review. Section 43(2) also requires that the head of the authority notify the Applicant of: the internal review decision, the reasons for the decision, and the Applicant's right to seek an independent review by the Information Commissioner.
2. On 26 November 2018, the Applicant sent an email requesting an internal review by the head of the Department of Corrections (**Department**) who, according to the PATI Act, is the Permanent Secretary of the Ministry of National Security. The Applicant did not receive an internal review decision by 7 January 2019.
3. The Applicant requested an independent review of the Department's failure to decide on 30 January 2019.
4. By letter dated 4 February 2019, the Department was invited by the Information Commissioner's Office (**ICO**) to make submissions on this application. In its submissions, the Department accepted that an internal review was not undertaken within the statutory timeframe. It explained that it intends to issue an internal review decision as soon as possible, but was unable to do so prior to the publication of this Decision Notice.
5. It is a matter of fact that the Department did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner finds that the Department failed to comply with section 43(2) of the PATI Act and orders the Department to issue an internal review decision by Thursday, 11 April 2019.

6. The Information Commissioner recommends that the Department of Corrections consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timescale for responding to the request for an internal review.

Decision

The Information Commissioner finds that the Department of Corrections failed to comply with Part 5 of the Public Access to Information (PATI) Act 2010 in responding to a request for an internal review made by the Applicant. In particular, the Department of Corrections failed to issue a decision on the Applicant's request for an internal review within the timeframe set forth in section 43(2) of the PATI Act.

As set forth in the accompanying Order, the Information Commissioner orders the Department of Corrections to provide a decision on the request for an internal review to the Applicant, with a copy to the Information Commissioner's Office, by 11 April 2019.

Judicial Review

Should the Applicant, the Department of Corrections, or any aggrieved party wish to seek judicial review according to section 49 of the PATI Act against this Decision, they have the right to apply to the Supreme Court for review of this Decision. Any such appeal must be made within six months of this Decision.

Enforcement

This decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the Department of Corrections fails to comply with this decision, the Information Commissioner has the authority to pursue enforcement in the same manner as an Order of the Supreme Court.



Gitanjali S. Gutierrez
Information Commissioner
28 February 2019

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