

Decision Notice

Decision 01/2020: Department of Human Resources

Personnel records

Reference no: 20180518

Decision date: 20 February 2020

Summary

The Department of Human Resources (**Department**) issued an internal review decision concerning a Public Access to Information (**PATI**) request, pursuant to the Information Commissioner's Order in Decision 02/2018. The internal review decision granted the Applicant access to all responsive records held by the Department.

This Decision finds that the application for an Information Commissioner's review of the Department's internal review decision does not raise any grounds that can be considered by the Information Commissioner.

Relevant statutory provisions

Public Access to Information (PATI) Act 2010: section 48 (decision by Commissioner).

The full text of the statutory provision cited above is reproduced in Appendix 1 to this Decision. The Appendix forms part of this Decision.

Background

1. This Decision is related to the Information Commissioner's Decision 02/2018, Department of Human Resources (Decision 02/2018), issued on 28 February 2018. Background information on the PATI request and the Department's initial handling of it can be found in that decision and will not be repeated here.
2. Decision 02/2018 required the Department to take several actions to comply with the PATI Act. Part 1 of the accompanying Order required the Department to search the records in its possession that are responsive to the PATI request and to issue a new internal review decision.
3. In accordance with Decision 02/2018, on 9 April 2018 the Department of Human Resources (**Department**) issued an internal review decision granting the Applicant access to all the responsive records in its possession. The Applicant collected the records. This satisfied the requirement of Part 1 of the Order.
4. In an email dated 18 May 2018, the Applicant expressed dissatisfaction with the Department's internal review decision. This email was treated by the Information Commissioner's Office (**ICO**) as an application for review by the Information Commissioner under section 45(1) of the PATI Act.

Investigation

5. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request to a public authority and asked the public authority for an internal review before asking her for an independent review.
6. On 24 May 2018, the ICO informed the Applicant that their application would be placed on hold while the Department completed the remaining requirements of the Order.
7. The ICO confirmed that the Department met the requirements of the Order accompanying Decision 02/2018, in full, on 1 August 2018.
8. The Department's internal review decision granted the Applicant access to the responsive records. In light of this, on 28 August 2018 and 10 September 2018, the ICO invited the Applicant to clarify the issues that they would like the Information Commissioner to consider in this review. The ICO did not receive a response from the Applicant.
9. Instead, on 14 September 2018, the ICO was notified that the Supreme Court granted the Applicant's application for judicial review of Decision 02/2018. The ICO subsequently informed the parties that the Applicant's new application before the Information Commissioner is being put on hold, pending the outcome of the judicial review.
10. On 8 July 2019, the ICO was informed that the judicial review application was no longer pending. The ICO again invited the Applicant to clarify the issues for the Information Commissioner's consideration.
11. On 26 November 2019, the Applicant asked the Information Commissioner to continue the review. The Applicant identified two grounds for relief:
 - a. The Applicant sought an order from the Information Commissioner requiring a third party to create a statement; and
 - b. The Applicant requested the Information Commissioner to apply the criminal provision in the PATI Act.
12. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because she was unable to identify any issues to be considered and resolved.

13. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties to the review a reasonable opportunity to make representations. The ICO shared its preliminary view with the parties that there are no issues which the Information Commissioner can consider in this review and invited them to comment. Neither party provided submissions.

Information Commissioner's analysis and findings

14. In coming to a decision on this matter, the Information Commissioner considered all of the relevant information provided by the Applicant and the Department both in the current and previous review. She is satisfied that no matter of relevance has been overlooked.

15. The Information Commissioner's authority in relation to a review is set out in section 48 of the PATI Act, which provides:

(1) The Commissioner may make a decision to--

(a) affirm, vary or reverse the decision of a public authority that is the subject of review by the Commissioner; or

(b) make such other order, in accordance with this Act, as the Commissioner considers appropriate.

(2) A decision of the Commissioner shall, where appropriate, specify the period within which effect shall be given to the decision.

16. As stated by the Supreme Court in Furber v Department of Human Resources, [2019] SC (Bda) 19 Civ, paragraph 17, "the jurisdiction of the [Information Commissioner] under the PATI Act is to review the decision made by the head of a public authority and if appropriate to order the productions on documents which come within the scope of the PATI Act".

17. Given that the Department's internal review decision of 9 April 2018 granted the Applicant access to the responsive records in full, and because the Information Commissioner has confirmed the reasonableness of the Department's search, the Information Commissioner is of the view that there is no outstanding issue for her consideration. There is no scope within the PATI Act for the Information Commissioner to provide the relief sought by the Applicant.

Decision

The Information Commissioner finds that there is no issue for the Information Commissioner to consider in this review.

In accordance with section 48(1)(a) of the PATI Act, the Information Commissioner affirms the Department's decision.

Judicial Review

The Applicant, the Department, or any party aggrieved by this Decision have the right to seek and apply for judicial review to the Supreme Court according to section 49 of the PATI Act. Any such application must be made within six months of this Decision.



Gitanjali S. Gutierrez
Information Commissioner
20 February 2020

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Decision by Commissioner

48 (1) The Commissioner may make a decision to—

- (a) affirm, vary or reverse the decision of a public authority that is the subject of review by the Commissioner; or
 - (b) make such other order, in accordance with this Act, as the Commissioner considers appropriate.
- (2) A decision of the Commissioner shall, where appropriate, specify the period within which effect shall be given to the decision.

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