Decision Notice

Decision 03/2018: Department of Health

Day care centres and child care provider records

Reference no: 25082016-02
Decision date: 30 April 2018

Summary

The Department of Health was asked for various records related to the inspections, complaints, investigations, safety concerns, and accidents involving day care centres and child care providers. The Department of Health administratively denied access to the records under section 16(1)(c) of the Public Access to Information (PATI) Act because processing the request would cause a substantial and unreasonable interference with or disruption of its other work. The internal review decision affirmed the denial of access to inspections, investigations and safety concerns records under section 16(1)(c) and denied access to complaint records under the exemptions in sections 23(1) (personal information), 25(1)(c) (adverse effect on commercial interests) and 26(1)(a) (information received in confidence). No internal review decision was issued with respect to the denial of records related to accidents.

The Information Commissioner annulled the Department of Health's decisions. The Information Commissioner found that the Department of Health did not comply with the requirement to consult with and offer to assist the Applicant before administratively denying the request, in accordance with section 16(2) PATI Act and regulation 9(1) of the Public Access to Information Regulations (PAIR). The Information Commissioner found that requiring the Department of Health to comply with section 16(2) and regulation 9(1) would be futile in light of the circumstances of this case and the positions of the parties. The Information Commissioner proceeded to find that fully processing the 23 February 2016 PATI request, as narrowed, will not cause a substantial and unreasonable interference or disruption. Finally, the Information Commissioner found that the Department of Health failed to issue a decision on the Applicant's request for an internal review within the statutory timeframe set forth in section 43(2) with respect to the request for accident records.

The Information Commissioner required the Department of Health to issue a new initial decision in response to the Applicant's 23 February 2016 PATI, as narrowed, and to issue an internal review decision of the denial of the Applicant's 1 June 2016 request for accident records.

Relevant Statutory provisions

Public Access to Information (**PATI**) Act 2010 section 15(1)(b) (extension of time), section 16(1)(c) and (2) (substantial and unreasonable interference), and section 43(2) (internal review decision); and Public Access to Information Regulations (**PAIR**) 2014, regulation 9 (unreasonable interference).

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

Background

1. On 23 February 2016, the Applicant made a Public Access to Information (**PATI**) request to the Department of Health for information related to child care providers. Specifically, the Applicant sought:

    - A list of all registered child care providers;
    - For every registered provider, the date on which the establishment was last visited by Environment Health Officers and the report from that visit, along with any other information related to the visit;
    - Information on all complaints received about registered child care providers from January 2011 to February 2016;
    - A list of investigations arising from complaints for the same period and the outcome of those inquiries;
    - Any records regarding the safety of playground and indoor play equipment at registered child care premises; and
    - Information on staff and student numbers at every registered provider.

2. On 5 April 2016, the Applicant received a letter from the Department of Health extending the six week period to respond to the PATI request in accordance with section 15(1)(b) because processing the request within the original six week period would cause a substantial or unreasonable interference with the daily operations of the authority. With the extension, the initial response was due on or before 17 May 2016.

3. On 17 May 2017, the Department of Health issued its initial decision. It granted access to lists of all registered child care providers, which consisted of day care centres and child care providers. It also granted access to the student-staff ratio information. Copies of these records were provided to the Applicant on 28 June 2017, which was the time period the Department of Health applied under section 14(3) of the PATI Act.

4. The Department of Health refused access to the remaining records. It relied upon an administrative denial under section 16(1)(c) because processing the request would create a substantial and unreasonable interference with or disruption of its other work. This was because processing the request would require it to manually retrieve the file for each registered day care centre or child care provider and remove the responsive inspection

reports, complaints, and related investigation reports from the individual file. The Department of Health further explained that its Environmental Health Section does not have the staffing resources to review and complete processing of the records.

5. On 18 May 2016, the Applicant asked the Department of Health for an opportunity to narrow the PATI request. The Department of Health informed the Applicant that the Applicant could submit a new, more-limited PATI request.

6. On 1 June 2016, the Applicant asserted the right to have an opportunity to narrow the original request. The Applicant proposed a reframed PATI request for the following records:

    - The date of the last environmental health officers' visit to child care provider establishments and the reports from that visit, and any other related information ("**inspections**");

    - Information on all complaints received about registered child care providers in the last 12 months ("**complaints**");

    - A list of investigations arising from the complaints made in the last 12 months and outcomes ("**investigations**");

    - Any records from the last 12 months regarding safety concerns on indoor and outdoor playground/play equipment at registered child care premises ("**safety**").

    The Applicant also requested a list of and details for accidents occurring at the day care centre and child care provider premises in the last 12 months ("**accidents**"). The Applicant acknowledged that this was a request for additional information and indicated that, if required, a separate PATI request would be submitted for this specific set of records.

7. On 21 June 2016, the Department of Health issued a revised initial decision. It considered the Applicant's narrowed request and the additional request for accident records. The revised initial decision continued to refuse the withheld records under section 16(1)(c). The request for accident records was refused on the same grounds. The revised initial decision relied upon the same reasoning as the May 2016 initial decision. The only new reasoning added was the Department of Health's clarification that the Environmental Health Section does not currently maintain a database of all complaints. This further supported its position that processing the request would create a substantial and unreasonable interference with or disruption of its other work.

8. On 28 June 2016, the Applicant requested an internal review of the decision to withhold the records.

9. On 22 July 2016, the Department of Health's internal review decision upheld the denial of access based on section 16(1)(c) for the records concerning inspections, investigations, and safety. It also upheld the denial of access to complaint records but relied upon the exemptions in section 23(1) (personal information), 25(1)(c) (commercial interests), and 26(1)(a) (information received in confidence). The internal review decision did not consider the denial of access to accident records.

10. In its internal review decision, the Department of Health explained that the requested inspection, investigation, and safety records were maintained in the individual files for each provider. Retrieving the records would require diverting an officer from public health duties to manually retrieve the individual files. The Department of Health stated it could not do this without severely detracting from its public health functions. The Department of Health added that it lacked the staffing resources to fully process the request. With respect to the investigation records, the Department of Health added that the inability to readily retrieve inspection records was a deficit in its procedures and it is actively working to automate the collation of pooled or anonymised reports.

11. By an email on 25 August 2016, the Applicant submitted a request for an independent review by the Information Commissioner, challenging the Department of Health's denial of access to the requested records.

Investigation

12. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a PATI request to a public authority and asked the public authority for an internal review before asking her for an independent review. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.

13. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Department of Health to determine whether its reliance on the administrative denial under section 16(1)(c) and various exemptions were justified.

14. On 17 November 2016, the Information Commissioner's Office (**ICO**) notified the Department of Health of the valid application and the case was allocated to an investigation officer.

15. The Information Commissioner initially requested access to all of the withheld records. The Department of Health responded that its refusal of the request was based, in part, upon an administrative denial under section 16(1)(a) because the records exist only in hard copy files and the Department of Health does not have the resources to retrieve and redact the records. To assist the ICO in understanding the nature of the records,

the Department of Health also proactively provided samples of redacted copies of the same inspection and complaint reports which had been processed and disclosed in response to a different PATI request involving 11 Government preschools.

16. The ICO clarified that the internal review decision did not rely on section 16(1)(c) to deny access to the complaint records, but instead relied upon exemptions. The ICO required the Department of Health to provide copies only of the withheld complaint records.

17. The Department of Health then provided the ICO with copies of the following withheld records: inspection reports, complaint forms, and investigations records related to those complaints for most of the day care centres and child care providers. The Department of Health noted that any safety or health concerns were documented in the records provided. The Department kept detailed notes of the time required for the retrieval and preparation of these records for the ICO investigation.

18. The ICO and Department of Health engaged in a series of communications to clarify the grounds the Department of Health was relying upon to withhold the responsive complaint records and the manner in which the ICO's investigation would proceed. The outcome of these discussions was the Information Commissioner's acceptance of the Department's clarification that it relied on a section 16(1)(c) administrative denial for all responsive records. The scope of the review was revised to consider only whether the Department of Health's reliance on section 16(1)(c) was justified. Any substantive exemptions previously relied upon by the Department of Health are not addressed in this Decision.

19. Section 47(4) of the PATI Act requires the Information Commissioner to give a reasonable opportunity to the public authority and the Applicant to make representations. The Department of Health and the Applicant were invited to comment on this application and make submissions to the Information Commissioner for consideration during this review. The Department of Health was also asked to answer specific questions to justify its reliance on section 16(1)(c) of the PATI Act.

20. In addition to its original and revised initial decisions and internal review decision, the Department of Health made six formal submissions to the Information Commissioner between November 2016 and March 2018, as well as provided information during meetings with the ICO investigators and an inspection of its filing systems.

Information Commissioner's analysis and findings

21. In coming to a decision on this matter, the Information Commissioner considered all of the relevant submissions, or parts of submissions, made by both the Applicant and the Department of Health. She is satisfied that no matter of relevance has been overlooked.

22. The Information Commissioner notes that for purposes of this review, the content of the withheld records the Department of Health provided in the early stages of this investigation was not considered as part of the section 16(1)(c) analysis below.

Substantial and unreasonable interference or disruption – section 16(1)(c) and (2)

23. Section 16(1)(c) allows public authorities to refuse a PATI request if, in the opinion of the head of the public authority, granting the request would cause a substantial and unreasonable interference with or disruption of the other work of the public authority:

> A public authority may refuse to grant a request if— ... (c) in the opinion of the head of the 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.

Section 16(1)(c) is an express acknowledgment that public authorities should not be required to process PATI requests when this would place a substantial and unreasonable burden on their resources.

24. As set out in section 16(1)(c), the interference or disruption must be due to:

- the volume of records that would need to be retrieved and examined, or
- the nature of the records that would need to be examined, or
- both.

Requirement to consult and offer to assist

25. Section 16(1)(c) must be read together with section 16(2), which provides that:

> A public authority shall not refuse to grant a request under subsection 1(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

26. If the public authority initially determines that the request would fall within 16(1)(c), section 16(2) requires a public authority to first assist the requester with a view towards amending the request so that it can be processed.

27. Regulation 9(1) of Public Access to Information Regulations (**PAIR**) 2014, explains in further detail what steps a public authority must take to assist a requester:

> . . . the information officer shall send written communication to the applicant—
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> (a) explaining how the request is likely to cause a substantial and unreasonable interference with or disruption of other work; and
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> (b) inviting consultation with a view to narrowing the request.

28. Together, section 16(2) and regulation 9(1) require the public authority to explain its reasons and supporting facts to the requester. It is not enough for a public authority to simply cite to 16(1)(c) and ask the requester to narrow the request.

29. The explanation must allow a requester a meaningful opportunity to consult with the public authority to amend the request. On the one hand, a public authority has knowledge of its records, records management practices, and resources. Along with its obligations under the duty to assist in section 12(2)(a) of the PATI Act, this makes a public authority better placed than the requester to offer practical suggestions on how to amend the request. On the other hand, the requester is often best positioned to offer suggestions for focusing a request to retrieve the information they wish to know.

30. The nature and amount of assistance required by section 16(2) may also vary significantly from case to case. It will depend upon the particular facts and circumstances of the request, including the willingness of the parties to engage in a meaningful discussion.

31. In most cases, the first step the public authority must take to meet the requirements of section 16(2) and regulation 9(1) is to retrieve, or attempt to retrieve, the responsive records.

32. This will then allow the public authority to explain the necessary details to the requester, which may include:

- the estimated volume of the records;
- the complex nature of the information in the records, if applicable;
- the potential locations in which the records are stored or filed and the relevant filing system;
- the steps that would be required to identify, locate, retrieve, and examine the records;

- the estimated length of time and personnel required to process the records;
- whether any records or parts of the records can be released without causing a substantial and unreasonable burden; and
- the size, staffing, and work of the public authority.

33. If a public authority fails to comply with requirements of section 16(2) and regulation 9(1), the Information Commissioner may annul the decision and require the public authority to consult with and assist the requester, and then to issue a new initial decision on the original PATI request.

The meaning of 'substantial' and 'unreasonable'

34. The interference or disruption under section 16(1)(c) must be both substantial and unreasonable. The ordinary meaning of 'substantial' is 'of considerable importance, size or worth'. Oxford Dictionary of English (3rd Ed.) The fact that processing a PATI request is burdensome, frustrating, or causes inconvenience is not sufficient. The interference or disruption has to be of significant, considerable impact upon a public authority's work.

35. Determining whether the interference or disruption is 'unreasonable' requires the public authority to consider whether, in light of objective factors, responding to the request would be 'beyond the limits of acceptability or fairness'. Oxford Dictionary of English (3rd Ed.) In considering unreasonableness, the fairness of the burden on the public authority must be viewed in light of the purposes of the PATI Act in section 2 to give the public the right to access to information held by public authorities to the greatest extent possible, subject to the exemptions within the Act; to increase transparency and eliminate unnecessary secrecy; to increase the accountability of public authorities; and to inform the public about the activities of public authorities.

36. When evaluating unreasonableness, PATI Regulation 9(2)(b) further identifies the types of factors that a public authority must consider as including the:

- nature and size of the public authority;
- number, type, and volume of responsive records; and
- time involved to fully process the request.

37. The full processing of a request requires a public authority to:

- identify, locate, and retrieve the records within its filing system;
- examine the records to decide whether to grant or refuse access, including consulting with any persons or bodies, copying records, and redacting records;
- notify the requester of interim or final decisions; and
- attend to any other required matters.

38. Regulation 9(2)(a) explains that when determining the resources and time it will take to process the request, a public authority should consider its existing resources, consistent with its attendance to its other work.

39. Section 16(1)(c) of the PATI Act is similar to section 15(1)(c) of Ireland's Freedom of Information Act 2014.[1] The Irish Information Commissioner has found substantial and unreasonable interference, for example, in Mr F and the Department of Justice and Equality,[2] when a division in a Department had only two relevant staff and the Department identified approximately 70 files with 14,000 pages that it would need to review to respond to a request. This estimate did not include additional documents held on the Department's database or in its email, parliamentary questions records, briefing documents, or documents in other identified locations.

40. Similarly, in Mr A and The Mater Misericordiae Hospital Limited,[3] the Irish Information Commissioner found that the Hospital was justified in denying a detailed, multi-part request seeking records over a five-year period that would require the Hospital to review potentially over 100,000 pages for only one part of the request. The Hospital provided documentation establishing that, for this part of the request, it would take 55 work days to review all of the responsive records. The decision noted that the records would also likely involve multiple exemptions. The Irish Information Commissioner accepted that the volume of records responsive to the entire request and the time required to examine all

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[1] Section 15 of Ireland's Freedom of Information (FOI) Act 2014 states:

> 15. (1) A head to whom an FOI request is made may refuse to grant the request where—
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> . . .
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> (c) in the opinion of the head, granting the request would, by reason of the number or nature of the records concerned or the nature of the information concerned, require the retrieval and examination of such number of records or an examination of such kind of the records concerned as to cause a substantial and unreasonable interference with or disruption of work (including disruption of work in a particular functional area) of the FOI body concerned.
>
> (4) A head shall not refuse, pursuant to paragraph . . . (c) of subsection (1), to grant an FOI request unless he or she has assisted, or offered to assist, the requester concerned in an endeavour so as to amend the request for re-submissions such that it no longer falls within those paragraphs.

When evaluating a denial because the records are voluminous, the Irish Information Commissioner also considers the size of the public authority, the volume and nature of the records, as well as the time and resources needed to process the records, consistent with the factors set out in PATI Regulation 9(2)(b). See, e.g., Ms X and the Health Insurance Authority, Case Number 060260, available at http://www.oic.ie/decisions/d060260-Ms-X-and-the-Health-Insuran/.

[2] Case Number 160464, available at http://www.oic.ie/decisions/d160464-Mr-F-and-the-Department-of-/index.xml.

[3] Case Number 160306, available at http://www.oic.ie/decisions/d160306-Mr-A-and-The-Mater-Miserico/index.xml.

of them would cause a substantial and unreasonable interference with and disruption of the Hospital's work.

41. As the PATI Act, and cases from other jurisdictions, make clear, the information required when offering to assist the requester is the same information that a public authority needs to consider when deciding whether processing the request would cause a substantial and unreasonable interference or disruption. Section 16(1)(c) should only be invoked on the basis of documented and defensible assessments of how a public authority's work will be interfered with or disrupted to a substantial and unreasonable extent.

Extension of time to avoid a substantial or unreasonable interference – section 15(1)(b)

42. A public authority may find that the interference is substantial but not unreasonable. Or it may find that the interference would be within an acceptable range if the timeframe for responding to the request was extended. Section 15(1)(b) allows a public authority to extend the time to respond when it finds that compliance with the original timeframe is not practicable because "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". The use of the word "or" indicates that an extension under section 15(1)(b) may be used to avoid an administrative denial under section 16(1)(c).

43. An extension under section 15(1)(b) should not be used when a public authority makes a final determination during the original timeframe that it will issue an administrative denial under section 16(1)(c), but it has yet to notify the requester of its decision. This would only further delay the response to the requester without the benefit of records being processed during the extension of time. If a public authority is engaged in an ongoing effort to satisfy the request, a section 15(1)(b) extension may be appropriate, even if the final decision is still an administrative denial under section 16(1)(c). A public authority should be prepared to evidence these ongoing efforts during the extension of time if the requester seeks a review of the decision.

Summary of test under section 16(1)(c)

44. In sum, section 16(1)(c) permits a public authority to deny a request if it determines that processing the request would, by reason of the number or the nature of the requested records, require the retrieval and examination of such number of records or a complex examination of records as to cause a substantial and unreasonable interference with or disruption of a public authority's work.

45. Section 16(2) requires that a public authority cannot deny a request under section 16(1)(c) unless it has first consulted with and assisted, or offered to assist, the requester to amend the request so that it no longer falls within section 16(1)(c). In offering to assist, the public authority must explain to the requester how processing the request

will cause a substantial and unreasonable interference with or disruption of the public authority's work. This explanation may include the details listed in paragraph 32 above.

46. If a public authority fails to comply with section 16(2), the Information Commissioner may annul its decision and require it to consult with and assist the requester, and then to issue a new initial decision on the original PATI request.

47. If the request is not successfully amended after complying with section 16(2), a public authority may consider whether denial is appropriate because processing the request will create a substantial and unreasonable interference or disruption.

48. A substantial interference or disruption must be more than a burden or inconvenience. It must rise to the level of a significant, considerable impact.

49. The interference or disruption will be unreasonable if it goes beyond the limits of acceptability or fairness, keeping in mind the purposes of the PATI Act. When determining unreasonableness, regulation 9(2)(b) requires a public authority to consider the:

    - nature and size of the authority,
    - number, type, and volume of records responsive to the request, and
    - time required to fully process the request.

    In assessing its available resources and the time required to process the request, the public authority should consider its existing resources, consistent with its other duties.

50. Finally, an extension of time is available under section 15(1)(b) if the original timeframe would cause a substantial or unreasonable interference with a public authority's daily operations. The additional time may enable the public authority to respond to the request.

Public authority's submissions

Requirement to consult and offer to assist

51. The Department acknowledged that, prior to issuing its initial decision, it did not write the Applicant to explain why and how processing the request was administratively burdensome and to invite the Applicant to consult on narrowing the request.

52. The Department submitted that after its initial decision, it communicated with the Applicant by email and phone to address narrowing the request. It provided email records and a phone note detailing these efforts. The Department explained to the Applicant that the only way to fulfil the request was to conduct a sampling of records, which was not accepted by the Applicant.

Substantial and unreasonable interference or disruption

53. The Department submitted that both the volume and the nature of the records that would need to be retrieved and examined would cause a substantial and unreasonable interference or disruption.

54. The Department submitted that the interference and disruption would be substantial because fully processing the request would be extremely time consuming. Based on its various estimates, the Department explained that the retrieval, copying, and re-filing of the responsive records alone would require approximately 12 hours of staff time. It estimated that further processing would require 4.1 hours: 2.1 hours for examining the documents, 1 hour for redacting, and 1 hour for preparing its redaction log. The Department found that diverting even 12 hours of staff time to engage in non-public health work would cause a substantial impact upon its ability to meet its essential public health functions, particularly when its Department was understaffed due to the hiring freeze and unfunded positions.

55. The Department emphasised that the retrieval is burdensome. This is due to the number of files and the manner in which the files are stored, as explained in further detail below.

56. The Department noted that it had previously responded to a different PATI request involving similar inspection, complaint, and investigation records for 11 Government preschools. The Department was able to manually retrieve this number of files. Once the responsive records were collected, the Department was able to consider the redactions without disruption of its work.

57. The Department stressed that it did not have dedicated staff for processing PATI requests nor electronic filing systems.

58. During the investigation, the Department offered extensive submissions on its size and staffing resources at the time of the request. The Department of Health explained that it had 188 of its 278 positions filled at the time of the request. The relevant section, the Environmental Health Section had 30 of its required 39 positions filled. The Department submitted that the Vector Control staff in the Environmental Health Section were not relevant because they did not conduct environmental health inspections. Due to the hiring freeze and budget cuts the Environmental Health Section had only 5-6 of the 13 required Environmental Health Officers ("EHOs") when it was processing the request. The Department stated that processing the request would remove the EHOs from their specialised tasks of inspecting and educating facilities, enforcing regulations, and making technical decisions.

59. In response to questions during the investigation on why it viewed the Department's available resources as only the 5-6 existing EHOs, the Department submitted that its administrative staff could not retrieve the records without being diverted from their duties to support the EHOs. The administrative staff duties include receiving and processing new applications, compiling records, preparing certificates, preparing purchase orders, and processing payments. The Department also submitted that if non-EHO staff reviewed the records and proposed redactions, the EHO would still need to review the redactions, effectively doubling the required staff time.

Number, type, and volume of responsive records

60. The Department identified that there were 126 responsive files, consisting of 55 files on day care centres and 71 files on child care providers.

61. Although the responsive records were not retrieved during the initial handling of this request, the Department stated that it had familiarity with the relevant filing system, the filing cabinets, and filing room due to its prior experience with PATI requests involving similar files stored with the Environmental Health Section.

62. The Department explained that, similar to the files for Government preschools, the files for the day care centres are maintained by building address, not type of entity. The files are also in hard copy only. To locate the records for day care centres would require pulling each file individually from the files for that street address.

63. The child care provider files are located together in hard copy in a single filing cabinet located in the Environmental Health Section office.

64. The Department furthered explained that it did not keep a list or statistical information on complaints about day care centres and child care providers for the relevant period, nor on the investigations that arose from the complaints. It submitted that this was due to the lack of electronic systems. During the ICO Investigator's visit to the Environmental Health Section office, the Department explained that only records related to serious complaints and investigations about day care centres or child care providers are recorded in the entity's file in the filing room. A manual count of the complaints is currently the only way to collect the total numbers and outcomes for serious complaints.

Estimated time to fully process the request

65. According to a sum of the Department's various detailed estimates, it would require the Department approximately 16.1 hours to retrieve files, extract the relevant records, copy, and refile the hard copy responsive records, and then to examine, redact, and compile them.

66. The Department submitted that it was certain that allocating this time for processing the PATI request would cause a substantial and unreasonable interference with the work of the Environmental Health Section, which includes conducting inspections to fulfil its essential public health functions.

67. The Department asserted that it would also be unreasonable because its employees are hired to fulfil public health functions to protect the public's health. It found it unreasonable to divert 12 hours of public health work to retrieve records for a PATI request, which it views as a non-public health matter. The Department did not have extra staff and was not in the position to hire new staff. The Department added that granting access to records would not unreasonably interfere with or disrupt its other work if there were designated resources to fulfil such PATI requests or if the records were available electronically.

Applicant's submissions

68. The Applicant confirmed that the Applicant spoke with the Department over the telephone about this PATI request. Although the Applicant could not recall the details, the Applicant confirmed that they would have discussed efforts to narrow the request. The Applicant explained the request was an effort to capture information on all of the day care centres and child care providers. The Applicant submitted that narrowing the request to a sample set of records would not have been useful.

69. The Applicant found it difficult to accept the Department's claim that it does not keep a log or list of complaints it has received about day care centres and child care providers. The Applicant also found it difficult to accept that when a complaint is received, the only record is placed into a paper file and no electronic copy or record is made. The Applicant submitted that each complaint would in itself generate some kind of paperwork and there would be some conclusion to the complaint, which someone would record somewhere.

70. The Applicant was of the view that the Department's recordkeeping system, as explained to the Applicant during the ICO's review stage, appeared archaic, unwieldy, and at odds with efficiency and transparency. The Applicant sympathised with the Department, but submitted that the PATI Act was enacted in July 2010 and did not come into effect until April 2015. According to the Applicant, the Department had almost five years to organise its records to be more accessible to the public through a PATI request.

Discussion

[1] *Did the Department assist, or offer to assist, the Applicant with amending the request?*

71. It is undisputed that prior to its initial decision, the Department of Health did not explain to the Applicant why processing the request would create substantial and unreasonable interference or disruption. Nor did the Department offer to assist the Applicant to amend or narrow the request to avoid a denial under section 16(1)(c).

72. Only when the Applicant received the initial decision did the Applicant learn that the Department found the PATI request too burdensome. The initial decision explained that the individual files would need to be retrieved and the Department's Environmental Health Section lacked the resources to retrieve and review the responsive records. No further details were provided about the Department's relevant filing system.

73. In response, the Applicant asserted the right for an opportunity to narrow the request. During a subsequent telephone call with the Applicant, the Department offered to provide samples of the records. The Department did not submit evidence showing that it provided the Applicant with sufficient details to enable the Applicant to know how to successfully narrow the request. The Department had a duty under section 16(2) and regulation 9 to explain the details of how and why the request was too burdensome. Critically, this included further details about the nature and structure of its filing system, its estimates about the volume of the records, the steps required to process the request, the staffing resources it considered relevant, and the time it estimated it would take to fully process the request. Most importantly, it needed to convey the burden created by a filing system based on geographical location.

74. The Applicant made an effort to reduce the number of actual responsive records for each entity by reducing the relevant number of years. This still required the Department to manually retrieve each file from its geographically-based filing structure.

75. The Applicant was not willing to accept a sample of records. Further details from the Department might have enabled the Applicant and Department to discuss whether, for example, rolling disclosures over a longer period of time and grouping the records by parishes would have allowed the Department to process records. This could have been done by asking the Applicant to amend the request to a smaller geographical area and then submit additional requests in the future for other areas.

76. The Information Commissioner recognises that the Department provided some information to the Applicant concerning the reasons why the request was too burdensome. Prior to issuing its initial decision and following it, however, the Department did not provide sufficient written detail about why and how processing the

request was too burdensome and did not offer the Applicant a meaningful opportunity to consult with the Department, with a view towards narrowing the request to avoid a denial under section 16(1)(c).

77. The Information Commissioner is satisfied that the Department did not comply with the requirements of section 16(2) and regulation 9(1).

[2] *Would fully processing the request cause a substantial and unreasonable interference or disruption?*

78. In most cases, the failure to comply with section 16(2) will mean that the Information Commissioner will not consider a public authority's reliance on section 16(1)(c). The public authority's decision will be annulled and it will be ordered to meet the requirements of section 16(2) to assist, or offer to assist, the Applicant to narrow the request, and then issue a new initial decision.

79. Here, it is unnecessary to require the public authority to meet the requirements of section 16(2) in light of the positions of the parties. After extensive discussions with the ICO during the investigation, the Department's position is that sampling is the only option that will allow it to respond to the request without creating a substantial and unreasonable burden. The Applicant has made clear that a sampling of records will not satisfy the PATI request. To require the parties to engage in further discussions would be futile.

80. Accordingly, the Information Commissioner will consider whether the Department was justified in denying the request under section 16(1)(c) because fully processing the responsive records would cause a substantial and unreasonable interference or disruption.

[a] *Whether processing the request would create a substantial interference or disruption?*

81. The Information Commissioner accepts the accuracy of the Department's estimate of 16.1 hours to retrieve, extract, copy, and refile the original files, as well as examine and redact the records and prepare its redaction log. Based on the released records related to Government preschools, the Information Commissioner recognises that some information in the responsive records may be exempt. For purposes of the section 16(1)(c) analysis, the Information Commissioner will consider 21 hours, or 3 working days, as the required time to fully process this request, including completion of the decision notice.

82. The Department has chosen to maintain the relevant files in hard copy form only. Its filing system has also organised most of its records for the Environmental Health Section

by associating records with the building and street address for all of the entities inspected by the Environment Health Section. For example, all businesses at 55 Tucker Street subject to the remit of the Environmental Health Section would be filed according to '55 Tucker Street', including day care centres, restaurants, and other regulated facilities that are located at that address.

83. The child care provider files are maintained in a separate file cabinet. The Department's time estimates for retrieving the records related to child care providers is less than for the day care centres, and may reflect that these records are filed in their own location.

84. Given the hard copy form of the records, the manner in which they are filed, and the number of files that need to be retrieved, it is expected that the retrieval of records would be time consuming and require efforts by the Department. This is not a request that requires, for example, the retrieval and processing of only two or three pages of electronic records or emailing a fully disclosable PDF to a requester. The Information Commissioner accepts that retrieval of the responsive records will cause some interference or disruption of the Department's other work.

85. The question under the PATI Act, however, is not whether processing the PATI request will cause some interference or disruption. The starting point under section 16(1)(c) is whether the Department's additional work to meet the requirements of the PATI Act creates a 'substantial' interference or disruption.

86. The Information Commissioner cannot accept the Department's submission that 12 hours of time to retrieve, copy, and refile records is 'extremely time consuming' and rises to a level of substantial disruption.

87. Even when the estimated time of three days to fully process the PATI request is considered, the Information Commissioner does not accept that this would amount to a substantial interference. The statutory time period for initially responding to a PATI request is 6 weeks, or an extended 12 week period, which allows a public authority to determine the most appropriate manner to allocate its time for processing the request. For example, the public authority could allocate about two hours a week for twelve weeks to process the request, if the available extended statutory time period was required. Alternatively, three days of work may divided as one day a month for three months.

88. Further, the tasks for processing the PATI request may be shared in accordance with the delegation provision in regulation 18(1) to ensure that no one individual bears the full burden or disruption of their duties to meet the compliance requirements placed upon the entire public authority.

89. In light of this flexibility and the availability of an extended time period, the disruption to the day-to-day duties of the Department as a whole does not rise to a level of substantial.[4]

90. The Information Commissioner is satisfied that processing this request would not cause a substantial interference with or disruption of the Department of Health's other work.

[b] *Whether processing the request would create an unreasonable interference or disruption?*

91. Because the substantial interference or disruption requirement under section 16(1)(c) is not met, the Information Commissioner does not need to consider the unreasonableness test. For the sake of completeness, however, she will consider whether processing the request will create an unreasonable interference with or disruption of the public authority's other work, with reference to the factors outlined in regulation 9(2)(b).

The nature and size of the Department of Health

92. Regulation 9(2)(b) states that the nature and size of the "public authority" must be considered. Here, the public authority is the Department of Health, not the Environmental Health Section. The requirements for complying with the PATI Act fall upon the public authority as an entire entity. For example, while an Information Officer has certain statutory duties, those duties may be delegated to ensure a public authority meets its obligations under the Act. See regulation 18(1). Part 3 of the Act, which sets out the right of access to public records, repeatedly references the requirements and obligations imposed upon a "public authority".

93. According to its Information Statement (dated 1 December 2016), the Department of Health assists the Minister in meeting her mandate under the Public Health Act. Most relevant for this case, the Department has responsibility for protecting the community against public health threats. This involves providing for the organisation and delivery of public health programs and services, the prevention of the spread of disease, and the promotion and protection of individual's health.

[4] As comparison, the Irish Information Commissioner has found that a substantial and unreasonable interference or disruption arose when a number of staff are diverted from existing duties for a period of time on a full-time basis, see Mr X and the Pensions Board, Case Number 120294, available at http://www.oic.ie/decisions/d120294-Mr-X-and-The-Pensions-Board/; when resources are diverted on a full-time basis for at least 6 weeks, see Mr X and the Office of the Revenue Commissioners, Case Number 130219; and when resources would have been diverted on a full-time basis for approximately 10 weeks, see Ms X and the Health Insurance Authority, Case Number 060260, available at http://www.oic.ie/decisions/d060260-Ms-X-and-the-Health-Insuran/. Further, the under the Irish Freedom of Information Law, public authorities have 4 weeks to respond to a request, with an extension available for an additional 4 weeks. Freedom of Information Law, section 13(1).

94. The Department's core functions to achieve this mandate are assessments to monitor public health; policy development to promote scientifically sound health policy; and assurances to guarantee the benefits of public health for all. The Department provides services in three areas: preventative health, health protection, and health promotion activities. The Department's Environmental Health Section falls within its health protection services.

95. The Department of Health has published additional Information Statements for its five specific Sections and Programmes, including the Environmental Health Section. These more specific Information Statements provide a wealth of information for the public concerning the essential services provided by the sections. For purposes of access to public information, though, the relevant public authority, and its accompanying resources, remains the Department of Health as a whole.

96. According to the figures in the Government of Bermuda Approved Estimates of Revenue and Expenditure for the year 2016/17 ('Budget Book'), pages B-131 to B-134, the Department of Health had a total budget in 2015-2016 of $25,474,000 with which to meet its mandate and other statutory requirements, including the PATI Act. It also had 262 full-time posts. The 2017/18 Budget Book, pages B-136 to B-139, indicates the Department Health had a total budget in 2016-2017 of $25,653,000 and 261 full-time posts. The Information Commissioner accepts the Department of Health's submission that only 188 of its posts were filled during this time due to budget cuts and the hiring freeze. It is not apparent from the Budget Books what, if any, of these resources the Department allocated specifically to meet its statutory requirements under the PATI Act or indirectly to manage and support its efficient record-keeping.

97. The Information Commissioner notes that a public authority may choose to manage its statutory obligations under the PATI Act in a number of ways taking into account its existing resources.

98. It is for the Department to determine if it is more effective to have EHOs retrieve records because these officers are more familiar with the filing system or whether administrative staff or staff from another section or programme could be used to retrieve files as well, particularly from the separate filing cabinet containing the child care centre folders.

99. The choice in how to manage its statutory requirements remains with the Department of Health. But if it asserts that it cannot fulfil a statutory right to access public records because doing so will create a substantial and unreasonable interference or disruption of its other work, the Department must begin its analysis with an assessment of all of its available resources for purposes of the PATI Act, as described in paragraph 96 above.

100. While sympathetic to the Department's submission that it only has a portion of its EHO positions filled, the Information Commissioner cannot accept limiting the Department of Health's relevant resources in this case to only 5-6 existing EHOs, or even to only the 30 staff members in the Environmental Health Section at the time of the request.

101. The Department of Health argues that if other staff retrieved and reviewed the responsive records, the 5-6 EHO officers would still be required to review and finalise any further processing of the records, such as redactions. This appears to be based on an assumption that only EHOs have the competence to review these records for purposes of PATI disclosures or the applicability of exemptions.

102. Based on a review of the sample records the Department of Health provided for Government preschools, the competence required to further process the records is familiarity with the PATI Act and its exemptions (such as personal information), and not expertise in EHO inspections. The sample records submitted do not use highly technical language nor involve complex or technical information. The forms are a straightforward and comprehensible recording of the EHO's assessment ('satisfactory/unsatisfactory') of various listed criteria, such as the presence of a clean diaper changing table.

103. Further, the similar redacted and released records for Government preschools could provide some guidance to any staff members assisting with the processing of this PATI request.

104. While the Department requires an EHO and their expertise for purposes of inspections, follow up contacts, and investigating complaints, the processing of records under the PATI Act requires the ability to comprehend the content of the records and then determine whether it can be disclosed. The later duties may potentially be fulfilled by a number of individuals within the Department who are assisting with the processing of this PATI request without causing an unreasonable interference with or disruption of the Department's other work.

The number, type, and volume of responsive records

105. The Information Commissioner accepts that retrieval of the responsive records would involve manually pulling 126 individual, hard copy file folders. The Department did not identify how many pages are contained within each file folder. Although the Applicant argued that Department must have a list of inspections or complaint investigations, the Information Commissioner accepts it is more probable than not that the Department only keeps a hard copy record of each inspection or complaint within the relevant entity's folder.

106. To assist the Information Commissioner's understanding of the responsive records, the Department provided the Information Commissioner with examples of redacted Day Care Centre Regulations 1999 - Evaluation/Inspection Reports that had been processed and released in response to a similar PATI request involving 11 Government preschools. Each Evaluation/Inspection Report form is 4 pages long. The first page contains public information for the entity, such as name and address, along with details about the number of children it is licensed for and has registered. Pages 2 and 3 include check boxes for marking the inspection results ('satisfactory/unsatisfactory') of listed criteria. The final page requires checking 'yes' or 'no' to indicate whether particular policies are in place and includes a section for the EHO to add any comments or identify concerns. The Department also included an example of a redacted Complaint/Incident form previously released as part of the same PATI request. It indicates the nature of the complaint and any follow up actions taken. The samples provided are legible and straightforward.

107. The examination of these types of records would not be unreasonable due to any complexity of the information. For the same reasons, nothing about the type of records in this case would preclude their review by other members of the Department of Health who are in the Environmental Health Section (i.e., Vector Control officers) or who are elsewhere within the Department of Health and familiar with the PATI Act.

108. Finally, while the responsive records may appear voluminous at first glance, they consist of identical forms, with the option for very limited individual notes written on some of them. The Information Commissioner accepts the Department's estimate that, once the records are retrieved, it would only take about 4 hours to examine and redact all of the responsive records and prepare its redaction log.

109. The burden attributed to the volume arises not from the volume of the actual records, but from the need to manually retrieve a large number of hard copy folders from a file structure based on street address.

The time involved to fully process the request

110. The Information Commissioner accepts the Department of Health's estimate that retrieval, copying, and refiling the responsive records would require 12 hours of staff time and that reviewing and redacting the records, and preparing the redaction log would require an additional 4.1 hours. As noted above, the Information Commissioner considers three days the required time to fully process the initial response to the PATI request, inclusive of preparation of a decision notice.

111. Three days of staff time is a reasonable amount of time for the processing of a PATI request. [5] Taking into account the 6 weeks allowed for processing a PATI request, the three days required to fully process a request will not unreasonably divert the resources of the Department of Health for a lengthy period. The three days required in this case is in stark contrast to the cases in Ireland, where the Irish Information Commissioner found an unreasonable burden when an authority's resources would be devoted full-time for multiple weeks. See footnote 4.

112. The time required is even more reasonable because it may be shared amongst officers assisting with PATI request, or divided across up to twelve weeks, if an extension is justified.

113. The Information Commissioner notes that in its submissions, the Department of Health objected to allocating even 12 hours of public health officer time to a non-public health matter, i.e., fulfilling its obligations under the PATI Act. The PATI Act is a new regulatory requirement for public authorities that brings our island in line with modern democracies. It heralds a new relationship between the public, public records, and public authorities. The PATI Act shifts the role of public authorities from guardians of

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[5] The Information Commissioner notes that such a time burden has also been found to be reasonable in jurisdictions with similar resources, such as the Cayman Islands. The Cayman Islands Freedom of Information Law 2018, section 9(c), has different statutory language to address requests that would result in an unreasonable diversion of resources:

> 9. A public authority is not required to comply with a request where-
>
> . . .
>
> (c) compliance with the request would unreasonably divert its resources;
>
> . . .

The Cayman Islands Freedom of Information (General) Regulations 2008, regulation 10(3), requires a public authority to take into account similar factors as PAIR regulation 9(2), when a public authority is making an 'unreasonable' determination.

In Decision, Cabinet Office, ICO Hearing 40-02813 (July 22 2014), para. [66], the Cayman Islands Information Commissioner (now the Deputy Ombudsman for Information Rights) explained that the Cayman Islands law did not establish a specific amount of required staff time as a threshold for finding that the time burden would be unreasonable. The Cayman Island Information Commissioner noted that approximately 24 hours of Cayman Island staff time would be the equivalent time under the parallel provision in the UK law and regulations, which establishes a cost threshold for when a public authority in central government does not have to process a request. Freedom of Information Act 2000 (CH.36 2000) section 12, and Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (2004 NO. 3244) regulations 3(2) and 4(4). In the Cayman Islands, a public authority has 30 calendar days to respond to a request, and an extension for an additional 30 days is available. Freedom of Information Law, section 7(4). In the UK, a response is due within 20 days, with no extension available because an application is burdensome. Freedom of Information Act, section 10(1).

The Information Commissioner notes that both Cayman Islands and the UK established these specific staff time thresholds in the context of public sector environments with robust records management laws, practice codes, policies, and procedures for which both governments have devoted substantial resources. At this point in the implementation of the PATI Act, this has not been established.

public information exerting the power to decide when public information will be shared, into the trustees of public records on behalf of the public and responsive to the public's request for access. The requirements of the PATI Act will undoubtedly involve additional time and resources as public authorities make the transition to the post-PATI Act public sector environment.

114. On balance, it is reasonable to allow for three days to uphold the public's right to access information about how the Department of Health carries out its functions. The PATI Act positions the public as a partner in public health efforts. Although the Department of Health may voluntarily choose to disclose a great deal of information about its work, the PATI Act allows members of the public to request access to other public records which have not been provided. This may allow the public to have a greater understanding of how the Department of Health carries out its activities and engages in decision making. In the past, the public's engagement through the PATI Act has led to or supported changes in how the Department of Health carries out its functions.[6]

115. In this case, the requested records involve inspections and reports related to day care centres and child care providers. The same records, with redactions, have been released for Government preschools. Such entities are entrusted with the well-being of infants and young children by parents and caregivers who, because of work or for other reasons, need someone else to care for their children. Disclosure of the responsive records may assist the public with selecting safe, hygienic providers for their children. It will also inform the public of the steps taken by the Department to monitor and ensure public health and safety for one of the island's most vulnerable population: pre-school-age infants and children. These parents and other caregivers trust that a facility's license and inspection by the Department of Health provides meaningful assurance of its safety and qualifications.

116. Finally, while it is reasonable to require three days to fully process this request regardless of the Department of Health's records management practices, the Information Commissioner notes that most of the time required for retrieval and refiling

[6] For example, the Department of Health's 'grades on licenses' program was introduced in 2017 after a PATI request for restaurant inspection records. See S. Strangeways, Restaurant safety grades made public, Royal Gazette, 30 November 2017, available at http://www.royalgazette.com/news /article/20171130/restaurant-safety-grades-made-public. The program is described on the Government of Bermuda website, https://www.gov.bm/grades-food-establishment-licences. In responding to the PATI request, the Department of Health indicated that the inspections at the time were not standardised. See S. Strangeways, Restaurants to get 'scores on the doors', Royal Gazette, 9 January 2017, available at http://www.royalgazette.com/news/article/20170109/restaurants-to-get-scores-on-doors. The new program provides the public with standardised and comparable information about restaurants, while ensuring a fair process for business owners. Both the industry and public have welcomed the program, which is similar to ones found in a number of other countries. See Restaurant safety grades made public, (comments from the head of the Bermuda Chamber of Commerce restaurant division and comments from the public to the article).

of the records is directly related to the manner in which the Department of Health stores and manages its records. As the Department acknowledged with respect to the similar Government preschools records, once the manual files are retrieved, the Department is able to further review and process the records without an interference with or disruption of its other work.

117. In the Applicant's view, the PATI Act was passed in 2010 and did not come into effect for five years, providing public authorities time to address their record management practices. The Applicant found the Department's records management system to be archaic, unwieldly, and at odds with efficiency and transparency. The Information Commissioner allows that the Department of Health may have a sound business justification for maintaining such an extensive amount of records related to the performance of its core functions only in hard copy and organised by their building's address.

118. The Information Commissioner does not, however, accept this as justification to deny a PATI request because retrieval of the records will be time-consuming. Should that be the case, the Department of Health—and any other public authority—could avoid public disclosure by maintaining only hard copy files in a filing structure that is cumbersome for retrieval of records for purposes of the PATI Act.

119. To date, the Minister for the PATI Act has not issued the practice code required by section 60(2) for public authorities related to "the maintenance and management of records of public authorities in a manner that facilities ready access to the records", which would contribute to setting an appropriate standard and guidelines. Its absence, however, does not remove the statutory obligation on public authorities to be able to retrieve their records, nor will its absence be a justification for lessening the right to access public information.

120. The Department of Health may decide to uphold the right to access records under the PATI Act by allowing for additional time to retrieve records in its current records management system. It may also decide to change its records management system to improve the efficiency of retrieval of its records. In fairness to the public's right to access public information, and the underlying purposes of the PATI Act, the additional time or work required for retrieving the records due to its present filing structure will not justify its reliance on section 16(1)(c) to deny access to the responsive records.

121. The Information Commissioner is satisfied that the time required to fully process the request is reasonable in light of the purposes of the PATI Act; the need to safeguard the right to access public information; and the limited diversion of resources for only three days to fully process the records over a six or twelve week period. The Information Commissioner is also satisfied that the reasonableness of the time requirement is

heightened due to the manner in which the Department of Health has chosen to maintain its records.

122. The Information Commissioner is satisfied that, under the circumstances, the requirement to fully process the responsive records will not create a substantial and unreasonable interference with or disruption of the public authority's work.

Failure to decide within statutory timeframes – section 43(2)

123. Section 43(1) of the PATI Act requires the public authority, through the head of the authority, to conduct an internal review. Section 43(2) gives the public authority a maximum of 6 weeks, after the date of receiving a request for an internal review, to complete the internal review. Section 43(2) also requires the public authority to notify the Applicant of: the internal review decision, the reasons for it, and the right to seek an independent review by the Information Commissioner.

124. When attempting to narrow the PATI request after the Department issued its initial decision, the Applicant added an additional item to the request on 1 June 2016: a list and details of any accidents that took place at day care centres or child care provider premises. In its revised initial decision on 21 June 2016, the Department refused the request for accident records under section 16(1)(c).

125. On June 28 2016, the Applicant sought an internal review of the entire revised initial decision. The Department's internal review decision issued on 22 July 2016 did not address the denial of accident records. The Applicant confirmed that a separate internal review decision for the accident records was not received.

126. Whether the request for accident records is viewed as an additional item in the original request or as a new PATI request, the Applicant received an initial decision denying the request and then made a valid request in writing for an internal review of that decision. It is a matter of fact that the Applicant did not receive a decision within 6 weeks of the Department's receipt of the request for an internal review of the denial of access to accident records.

127. The Information Commissioner is satisfied that the Department of Health failed to comply with section 43(2) of the PATI Act with respect to the request for accident records.

Decision

The Information Commissioner finds that the Department of Health failed to comply with Part 3 of the Public Access to Information (PATI) Act in responding to the request for access to records made by the Applicant. Specifically, the Department of Health did not comply with the requirement to consult with and offer to assist the Applicant, in accordance with section 16(2) of the Public Access to Information (PATI) Act 2010 and regulation 9(1) of the Public Access to Information Regulations 2014 (PAIR). The Information Commissioner further finds that fully processing the 23 February 2016 PATI request, as narrowed, will not cause a substantial and unreasonable interference with or disruption of the work of the Department of Health in accordance with section 16(1)(c) of the PATI Act, as claimed. Finally, the Information Commissioner finds that the Department of Health failed to issue a decision on the Applicant's request for an internal review within the statutory timeframe set forth in section 43(2) with respect to the 1 June 2016 PATI request for accident records.

In accordance with section 48(1)(b) of the PATI Act, the Information Commissioner annuls the decisions of the Department of Health and requires it to issue a new initial decision in response to the Applicant's 23 February 2016 PATI request, as narrowed, on or before **11 June 2018**. The Information Commissioner also requires the Department of Health to issue an internal review decision for the Applicant's 1 June 2016 request for accident records on or before **11 June 2018**.

Judicial Review

Should either the Applicant or the Department of Health 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 application must be made within six months of this Decision.

Gitanjali S. Gutierrez
Information Commissioner
30 April 2018

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Extension of time

15 (1) A public authority may extend the original period of six weeks referred to in section 14(1) by such further period, not exceeding six weeks, as the authority considers necessary if, in the opinion of the head of the authority, compliance with the original period of six weeks is not reasonably practicable because—

. . .

(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.

Refusal of request on administrative grounds

16 (1) A public authority may refuse to grant a request if—

. . .

(c) in the opinion of the head of the 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.

. . .

(2) A public authority shall not refuse to grant a request under subsection (1)(b) or (c), unless the authority has assisted, or offered to assist, the requester to amend the request in a manner such that it no longer falls under those provisions.

Conduct of review

43 . . .

(2) The head of the public authority shall within six weeks after receiving an application for an internal review with respect to a request—

(a) complete the review and make a decision with regard to the review; and

(b) notify the requester and any third party concerned of—

(i) the decision and the reasons for the decision; and

(ii) the right of the requester or third party, as the case may be, to apply to the Commissioner for a review of the decision under Part 6.

Public Access to Information Regulations 2014

Unreasonable interference or disruption of other work

9 (1) Before a public authority makes a decision to refuse access under section 16(1)(c) of the Act (on the basis that the request would unreasonably interfere or disrupt other work) the information officer shall send written communication to the applicant—

(a) explaining how the request is likely to cause a substantial and unreasonable interference with or disruption of other work; and

(b) inviting consultation with a view to narrowing the request.

(2) The information officer shall make a determination on the criteria for refusal in section 16(1)(c) of the PATI Act on a case by case basis and for this purpose—

(a) the resources to be considered are the existing resources of the public authority reasonably required to process the request consistent with attendance to other priorities including—

(i) identifying, locating or collating the records within the public authority's filing systems; and

(ii) deciding whether to grant, refuse or defer access to the records or edited copies including resources to be used in examining the records, consulting with any person or body, making copies (or edited copies) of the records, notifying the applicant of any interim or final decision on the request and any other matters; and

(b) the types of factors which shall be considered to determine whether the interference with or disruption of the other work would be unreasonable include—

(i) the nature and size of the public authority;

(ii) the number, type and volume of records falling within the request; and

(iii) the time involved in fully processing the request.

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