

Decision Notice

Decision 01/2019: Accountant General

Payroll and pension records

Reference no: 04012016

Decision date: 11 January 2019

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Accountant General for payroll and pension records from 1978 to 1981 related to the Applicant's employment with the Government. The Accountant General administratively denied the request in accordance with section 16(1)(a) of the PATI Act because the records could not be found after all reasonable steps had been taken to locate them. The internal review decision upheld the initial decision on the same grounds.

The Information Commissioner found that the Accountant General did not conduct a reasonable search for the records in response to the PATI request. During the Information Commissioner's review, the Accountant General conducted an additional search, rectifying the reasonableness of its original search, and could not locate the records.

The Information Commissioner verified the reasonableness of the Accountant General's additional search. The Information Commissioner did not require the Accountant General to take any further action in response to this request.

Relevant Statutory provisions

Public Access to Information (**PATI**) Act 2010: section 16(1)(a) (records cannot be found).

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. On 7 October 2015, the Applicant, a retired Government employee, made a Public Access to Information (**PATI**) request to the Accountant General. The Applicant sought records related to the Applicant's employment with the Government for the period from 1978 to 1981, including payroll and pension records; Bermuda Industrial Union records of deductions; vacation records; and Parks Department employment records.
2. The Applicant's PATI request arose out of an ongoing dispute concerning the correct calculations of the Applicant's pension benefits.
3. On 18 November 2015, the Accountant General provided access to some records and denied the remainder of the PATI request on administrative grounds in accordance with section

16(1)(a) of the PATI Act because the records could not be found after all reasonable steps were taken to locate them.

4. On 23 November 2015, the Applicant made a written request to the Accountant General for an internal review.
5. On 30 December 2015, the Accountant General issued an internal review decision upholding its original decision on the same grounds.
6. The Applicant submitted a timely application on 4 January 2016, seeking an independent review by the Information Commissioner. The Applicant challenges the Accountant General's reliance on section 16(1)(a) and the reasonableness of its search.

Investigation

7. 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.
8. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Accountant General to determine whether its reliance on the administrative denial under section 16(1)(a) was justified.
9. On 29 April 2016, the ICO notified the Accountant General that the Applicant had made a valid application.
10. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties to the review a reasonable opportunity to make representations. Both parties made representations in this case.
11. During the investigation, the Information Commissioner required the Parks Department (formerly Agriculture and Fisheries), as the department that had employed the Applicant, to provide factual submissions explaining how the former Agriculture and Fisheries Department handled its personnel records.
12. Upon reviewing the submissions from both parties, the Information Commissioner decided that a facilitated resolution was appropriate. Both parties agreed to participate in a facilitated resolution.

13. As part of the facilitated resolution, the Accountant General conducted an additional search of specific file boxes, which it held in storage at the Government Records Centre, that were likely to hold hard copies of records of the former Agriculture and Fisheries for the years 1978-1981. The ICO verified the reasonableness of the search and its results. The Accountant General did not locate hard copies of any records relating to the Applicant. The Accountant General notified the Applicant of its new decision based on these searches.
14. The Applicant acknowledged receipt of the new decision, which informed the Applicant of the new search and the results. The Applicant exercised the right to a decision by the Information Commissioner on the application for review.

Information Commissioner's analysis and findings

15. 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 Accountant General. She is satisfied that no matter of relevance has been overlooked.

Records cannot be found – section 16(1)(a)

16. Section 16(1)(a) allows public authorities to refuse a PATI request on the basis that the responsive record cannot be found, after all reasonable steps have been taken to find it. Section 16(1)(a) of the PATI Act is set out in the Appendix in full.
17. The Information Commissioner's Decision Notice 04/2017, Department of Health, sets out the tests to be met for determining whether, on the balance of probabilities, all reasonable steps have been taken to find records responsive to a PATI request. In making a decision on whether a public authority's search is reasonable, the Information Commissioner shall consider the quality of the public authority's analysis of the request, the scope of the search that it decided to make on the basis of that analysis, and the rigour and efficiency of the search. The assessment of these tests will be informed by the specific circumstances of each case.

Public authority's submissions

18. The Accountant General provided submissions concerning the searches it conducted when processing this request. It acknowledged that it did not search its file boxes in the Government Records Centre that held hard copies of 1978-1981 records for the former Agriculture and Fisheries Department.

Parks Department's submissions

19. The Parks Department provided its understanding of the history of its employee records. The Parks Department submitted that in the mid- to late-1980's, the Agriculture and Fisheries Department's employee records were maintained in a human resources records management software program on a standalone computer that was not networked. No other computer held this information. During its computer upgrade in the 1990s, these electronic records were lost when the human resources software program was not transferred to a new computer and the standalone computer was destroyed according to the Government's existing IT protocols.
20. The Parks Department could not confirm whether it retained the related hard copy employee records and whether they had been delivered to the Government Records Centre for storage.

Applicant's submissions

21. The Applicant made extensive submissions on his prior meetings with the Accountant General.

Discussion

22. The Accountant General submitted the details of the searches it conducted during its processing of the request. It acknowledged that it did not search its file boxes holding copies of 1978-1981 Agriculture & Fisheries employee files stored at the Government Records Centre.
23. The Information Commissioner is satisfied that, because the Accountant General failed to search the location in Archives which could potentially store the responsive records, the Accountant General did not conduct a reasonable search during its original handling of the PATI request.
24. During this review, however, the Accountant General conducted a reasonable search of the only location likely to hold the requested records. It concluded that the records responsive to the PATI request could not be found. The Accountant General informed the Applicant of the results of the additional search.
25. The ICO verified the results of the Accountant General's additional search. The Information Commissioner is satisfied that the records could not be found after the Accountant General took all reasonable steps to locate them during the Information Commissioner's review.

Decision

The Information Commissioner finds that the Accountant General initially failed to comply with Part 3 of the Public Access to Information (PATI) Act 2010 in responding to the request for payroll and pension records of the Applicant from 1978-1981. Specifically, the Accountant General did not justify its reliance on section 16(1)(a) of the Act to deny access to the records on administrative grounds. The Information Commissioner found that the Accountant General had not conducted a reasonable search for the records and annuls its original decision in accordance with section 48(1)(b) of the Act.

The Accountant General has now conducted a reasonable search and informed the Applicant of the results of the additional search. The Information Commissioner does not require the Accountant General to take any further action in response to this request.

Judicial Review

Should either the Applicant or the Accountant General 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
11 January 2019

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Refusal of request on administrative grounds

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

- (a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;

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**Information Commissioner for Bermuda
Valerie T. Scott Building
60 Reid Street
Hamilton, HM 12
www.ico.bm
441-294-9181**