

Decision Notice

Decision 26/2019: Ministry of Education Headquarters

Records related to the Adopt-a-School programme

Reference no: 03112016

Decision date: 8 November 2019

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Education Headquarters (**Ministry**) for all records related to the Ministry's Adopt-a-School programme. The Ministry issued an internal review decision disclosing records to the Applicant and stating that no other records were held by the Ministry. The Applicant applied to the Information Commissioner on the basis that the Ministry had not conducted a reasonable search in compliance with section 12 of the PATI Act.

The Information Commissioner has found that the Ministry did not conduct a reasonable search for records at the time of the internal review decision. The Information Commissioner is satisfied that the Ministry conducted a reasonable search during the Information Commissioner's review.

The Information Commissioner has ordered the Ministry to process the records and issue an initial decision on or before **Friday, 20 December 2019**.

Relevant Statutory provisions

Public Access to Information (**PATI**) Act 2010: section 12 (access to records).

Public Access to Information Regulations (**PAIR**) 2014: regulation 5 (reasonable search).

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 11 February 2016, the Applicant made a Public Access to Information (**PATI**) request to the Ministry of Education Headquarters (**Ministry**). The Applicant sought all records related to the Ministry's Adopt-a-School programme, which was launched under the then Minister of Education, Dame Jennifer Smith, in 2010. The Applicant specifically requested a list of all the schools that were adopted, the name of their adopters, the length of time each adoption lasted, the amounts of money given to the schools by the adopters and detailed information on how that money was spent.
2. The request was acknowledged by the Ministry on 2 March 2016. The Applicant did not receive an initial decision. On 19 April 2016, the Applicant requested an internal review. No internal review decision was issued. However, on 3 June 2016, various documents were disclosed to the Applicant.

3. On 8 September 2016, the Ministry issued an internal review decision.¹ The internal review decision stated that roughly two half work-days had been spent searching through historical 2010 to 2012 hard file folders for letters and internal memoranda relating to the Adopt-a-School programme. In addition, an electronic search of the topic had been made on the Ministry's website and in its central database of soft files, and the Ministry had carried out internet searches on various other websites to supplement the limited information found in its files. No additional documents were provided to the Applicant pursuant to the internal review.
4. On 3 November 2016, the Applicant requested an independent review by the Information Commissioner of the Ministry's internal review decision.

Investigation

5. 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.
6. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Ministry.
7. On 25 November 2016, the Information Commissioner's Office (**ICO**) notified the Ministry that the Applicant had made a valid application. During investigation, it was determined that a facilitated resolution was appropriate because the Ministry was willing to conduct additional searches for responsive records.
8. In October 2018, the Ministry and the Applicant agreed to participate in a facilitated resolution. During the facilitated resolution, the Ministry agreed to conduct additional searches and was able to locate additional records responsive to the PATI request. The Ministry has not yet processed these records and no initial decision has been issued to the Applicant.
9. The Information Commissioner has determined that a decision should be issued on this application for review, in accordance with the Applicant's right under section 47(6) of the PATI Act.

¹ The internal review decision was issued in accordance with Decision Notice 03/2016, Ministry of Education Headquarters.

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 were given the opportunity to make representations during the review.

Information Commissioner's analysis and findings

11. 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 Ministry. She is satisfied that no matter of relevance has been overlooked.

Reasonable search – section 12

12. Section 12(2)(b) of the PATI Act and regulation 5 of the Public Access to Information Regulations (**PAIR**) 2014, require a public authority to conduct a reasonable search for records held by the public authority, in support of the right to access public records set out in section 12(1).
13. 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.

Public authority's submissions

14. The Ministry has accepted that it did not conduct a reasonable search during the original processing of the PATI request.

Applicant's submissions

15. The Applicant provided submissions on the Ministry's handling of the PATI request. Based on the limited information contained in the records disclosed by the Ministry and the Ministry's representations that there were no other records, the Applicant believed that there must be outstanding records held by the Ministry. The Applicant submitted that the Ministry must have records of the amount of money given by each company for each school year and stated that this information would be essential to good record-keeping in a public programme.
16. The Applicant did not make submissions on the search conducted by the Ministry during the facilitated resolution.

Discussion

17. The Information Commissioner is satisfied that the Ministry did not conduct a reasonable search in its original handling of the PATI request and that this led to an

incomplete and inaccurate initial response to the PATI request. The Information Commissioner notes that this was one of the first PATI requests handled by the Ministry.

18. During this review the Ministry agreed to conduct additional searches and identified additional responsive records. The Information Commissioner recognises that the Ministry correctly interpreted the PATI request and identified the potential locations for responsive records during the facilitated resolution.
19. The ICO verified the Ministry's additional searches and the results. The Information Commissioner is satisfied that the Ministry's additional search was reasonable and expresses appreciation to the Ministry for its efforts during this review.
20. The Ministry is required under the PATI Act to process the records located in the additional search and to issue a new initial decision to the Applicant on whether the records should be disclosed to the Applicant or withheld under a provision in the PATI Act.

Decision

The Information Commissioner finds that the Ministry of Education Headquarters (**Ministry**) failed to comply with Part 3 of the Public Access to Information (**PATI**) Act 2010 in responding to the Applicant's PATI request. Specifically, the Ministry failed to conduct a reasonable search as required by section 12 of the PATI Act and regulation 5 of the Public Access to Information Regulations (**PAIR**) 2014.

In accordance with section 48(1) of the PATI Act, the Information Commissioner annuls the Ministry's decision and requires the Ministry to process the records responsive to the PATI request and issue a new initial decision to the Applicant on or before **Friday, 20 December 2019**.

Judicial Review

The Applicant and the Ministry 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.

Enforcement

This decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the Ministry 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
8 November 2019

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Access to records

- 12 (1) Subject to this Act, every person who is a Bermudian or a resident of Bermuda has a right to and shall, on request, be given access to any record that is held by a public authority, other than an exempt record.
- (2) Public authorities shall make every reasonable effort to-
- (a) assist persons in connection with requests; and
 - (b) respond to request completely, accurately and in a timely manner.
- ...

Public Access to Information Regulations 2014

Reasonable search

- 5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.
- (2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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