

Decision Notice

Decision 33/2019: Department of Child and Family Services

Various records on Glen Mills Schools: failure to decide within statutory timeframes

Reference no: 20191107

Decision date: 19 December 2019

Summary

On 25 June 2019, the Applicant asked the Department of Child and Family Services (**Department**) for various records related to Glen Mills Schools in Pennsylvania, United States. This Decision finds that the Department failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information (**PATI**) Act 2010.

The Information Commissioner has ordered the Department to comply with the requirement to issue a decision on the request for an internal review on or before Thursday, 16 January 2020.

Background

1. This Information Commissioner's Decision is made in the context of a 'failure to decide' case involving an application for review under Part 6 of the Public Access to Information (**PATI**) Act that was received by the Information Commissioner's Office on 7 November 2019.
2. This Decision does not address whether a public authority has properly denied access to a record. Rather, it addresses the basic obligation upon a public authority to respond to a requester within the statutory timeframes.
3. Relevant dates:

Date	Action
25 June 2019	The Applicant made a written PATI request to the Department.
	The Applicant did not receive an initial decision within six weeks of the Department's receipt of the PATI request, i.e., by 6 August 2019.
9 August 2019	The Department extended the timeframe to respond to the PATI request by 17 September 2019.

	The Applicant did not receive an initial decision by the extended timeframe to respond to the PATI request, i.e., by 17 September 2019.
24 September 2019	The Applicant requested an internal review be conducted by the head of the public authority.
	The Applicant did not receive an internal review decision within six weeks of the Department’s receipt of the request for one, i.e. by 5 November 2019.
7 November 2019	The Applicant requested an independent review by the Information Commissioner.
8 November 2019	The Department was notified in writing that an application had been received from the Applicant. The Department was asked to comment on the application.
29 November 2019	The Department provided submissions to the Information Commissioner for consideration in this review.

Information Commissioner’s analysis and findings

Internal Review Decision

1. Section 43(1) of the PATI Act requires the head of a public authority to conduct an internal review. Section 43(2) gives the head of the public authority a maximum of six weeks, after the date of receiving a request for an internal review, to complete the internal review. Section 43(2) also requires that the head of the authority notify the Applicant of: the internal review decision, the reasons for the decision, and the Applicant’s right to seek an independent review by the Information Commissioner.
2. On 24 September 2019, the Applicant sent the Department an email requesting an internal review. The Applicant did not receive an internal review decision by 5 November 2019.
3. By letter dated 8 November 2019, the Department was invited by the Information Commissioner’s Office (ICO) to make submissions on this application, as required by section 47(4) of the PATI Act. In its submissions, the Department accepted that it had not issued an

internal review decision within the statutory timeframe as a matter of oversight. The Department explained that it has been working on the PATI request utilizing the resources available and noted that the request was 'quite extensive', which has required extensive research and has impacted it financially due to labour resources being extended beyond regular working hours.

4. The Information Commissioner appreciates the Department's continued effort to respond to the Applicant's PATI request. It is a matter of fact, however, that the Department did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Department failed to comply with section 43(2) of the PATI Act.

Decision

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

As set forth in the accompanying Order, the Information Commissioner orders the Department to provide a decision on the request for an internal review to the Applicant in accordance with section 43 of the PATI Act, with a copy to the Information Commissioner's Office, **on or before Thursday, 16 January 2020.**

Judicial Review

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

Enforcement

This decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the Department 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
19 December 2019

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