

Decision Notice

Decision 02/2020: Department of Health

Records of incidents in day care centres and child care provider

Reference no: 20180821

Decision date: 16 March 2020

Summary

The Department of Health (**Department**) issued an internal review decision on a Public Access to Information (**PATI**) request made on 1 June 2016, pursuant to the Information Commissioner's Order in Decision 03/2018. The internal review decision partially refused the PATI request under the exemptions in section 23(1) for personal information and section 26(1)(a) for information received in confidence.

During this Information Commissioner's review, the Department made additional disclosure, which satisfied the PATI request. The Applicant exercised their right to a decision by the Information Commissioner. This Decision finds that, in light of the additional disclosure, there are no issues for the Information Commissioner to consider in this review. The Department is not required to take further steps.

Relevant statutory provisions

Public Access to Information (PATI) Act 2010: section 23 (personal information); section 26 (information received in confidence); section 47 (review).

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

Background

1. This Decision is related to the Information Commissioner's Decision 03/2018, Department of Health (Decision 03/2018), issued on 30 April 2018. Background information on the PATI request, which was made on 1 June 2016, and the initial handling of it by the Department of Health (**Department**) can be found in that decision and will not be repeated here.
2. Decision 03/2018 required the Department to take several actions to comply with the PATI Act, including to issue an internal review decision on the PATI request.
3. In accordance with Decision 03/2018, on 24 July 2018 the Department issued an internal review decision, granting the Applicant access to the responsive records in part. The Department redacted parts of the disclosed records, including those identifying the names of the responsive day care centres and child care providers under the exemptions in section 23(1) (personal information) and section 26(1)(a) (information received in confidence).

4. The Applicant made an application for an independent review by the Information Commissioner, challenging the Department's internal review decision.

Investigation

5. The ICO accepted the application as valid. The Information Commissioner confirmed that the Applicant made a valid request to a public authority and asked the public authority for an internal review before asking her for an independent review.
6. On 28 August 2018, the Applicant informed the Information Commissioner's Office (**ICO**) that they only challenged the Department's reliance on the exemptions in section 23 and 26(1)(a) to redact the names of the child care facilities. The Applicant did not dispute the redaction of information identifying any children or complainants.
7. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate because submissions were required from the Department.
8. On 14 September 2018, the ICO notified the Department that the Applicant had made a valid application.
9. The ICO determined that the Department had previously disclosed the majority of the information withheld in this case. As a result, on 25 October 2019, the ICO invited the Department to reconsider the redaction of the names of the child care facilities. The Department subsequently disclosed to the Applicant the relevant information in the responsive records.
10. The Applicant confirmed that the additional disclosure satisfied the PATI request. The Applicant, however, exercised the right to a decision by the Information Commissioner. In accordance with section 47(6) of the PATI Act, the Information Commissioner is required to issue a decision on this matter.
11. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties involved in the review a reasonable opportunity to make representations. The ICO shared its preliminary view with the parties that no issues remained for the Information Commissioner to consider in this review. Neither party provided additional submissions.

Information Commissioner's analysis and findings

12. In coming to a decision on this matter, the Information Commissioner considered all of the relevant information provided by the Applicant and the Department both in the current and previous review. She is satisfied that no matter of relevance has been overlooked.
13. In light of the Applicant's confirmation that the Department's additional disclosure satisfies the PATI request, the Information Commissioner finds that no issue remains for the Information Commissioner to consider in this review.
14. The Information Commissioner commends the Department's cooperation in this review and its willingness to reconsider its earlier decisions on the Applicant's PATI request.

Decision

The Information Commissioner finds that the Department has disclosed all information at issue in the records. No issues remain in this review for the Information Commissioner to consider.

Judicial Review

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



Gitanjali S. Gutierrez
Information Commissioner
16 March 2020

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Personal information

23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.

...

(6) A record that contains personal information relating to an individual shall be disclosed if disclosure of it is in the public interest or would benefit the individual.

Information received in confidence

26 (1) Subject to subsection (2), a record that consists of the following information is exempt from disclosure—

(a) information—

- (i) that is given to a public authority by a third party (other than another public authority) in confidence on the understanding that it would be treated as confidential; and
- (ii) the disclosure of which would be likely to prevent the authority from receiving further similar information required by the authority to properly fulfil its functions

...

(2) A record shall be disclosed if disclosure of it is in the public interest.

Review

47 (1) ...

(6) The Commissioner shall, as soon as practicable—

- (a) complete the review and make a decision with regard to the review; and
- (b) notify the requester, the public authority and any third party concerned of the Commissioner's decision and the reasons for that decision.

**Information Commissioner for Bermuda
Maxwell Roberts Building
4th Floor
One Church Street
Hamilton HM11
www.ico.bm
441-543-3700**