

## Decision Notice

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### Decision 03/2020: Ministry of Education Headquarters

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#### **Records of personal information**

**Reference no:** 20190514

**Decision date:** 19 March 2020

## Summary

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The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Education Headquarters (**Ministry**) for records relating to their son and the Ministry's internal policies. The Ministry transferred the request to the Department of Education.

The Information Commissioner has found that the Ministry's decision to transfer the request was incorrect because it holds records responsive to the PATI request. The Information Commissioner is satisfied, however, that the Ministry took reasonable steps to meet the requirements of the PATI Act during the review.

The Information Commissioner did not require the Ministry to take any further action in response to this request.

## Relevant Statutory provisions

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Public Access to Information (**PATI**) Act 2010: section 13 (request for access).

Public Access to Information Regulations (**PAIR**) 2014: regulation 8 (transfer of requests).

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

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1. On 13 March 2019, the Applicant made a Public Access to Information (**PATI**) request to the Ministry of Education Headquarters (**Ministry**). The Applicant sought records related to their son and the Ministry's internal policies.
2. The Applicant did not receive an initial decision within six weeks after the date of the PATI request.
3. On 26 April 2019, the Applicant sought an internal review by the head of the Ministry.
4. On 10 May 2019, the Ministry provided the Applicant with an internal review decision. The internal review decision informed the Applicant that the Ministry does not hold any records responsive to the PATI request and that the request has been transferred to the Department of Education.

5. The Applicant submitted a timely application on 14 May 2019, seeking an independent review by the Information Commissioner. The Applicant challenged the Ministry's decision to transfer the PATI request.

## **Investigation**

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6. 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.
7. On 29 May 2019, the Information Commissioner's Office (**ICO**) notified the Ministry that the Applicant had made a valid application. The Information Commissioner determined that early resolution under section 46 of the PATI Act was appropriate because the only issue for consideration is whether the Ministry's decision to transfer was correct. The Ministry did not respond to the invitation to participate in early resolution. The Information Commissioner found early resolution efforts unsuccessful and commenced a review pursuant to section 47 of the PATI Act.
8. During investigation, the parties agreed to attempt a facilitated resolution. As part of the facilitated resolution, the Ministry conducted additional searches between July and August 2019, which were verified by the ICO. This led to the identification of the records responsive to the PATI request. The Ministry subsequently provided the Applicant with full access to these additional responsive records.
9. The Applicant has not withdrawn the application. In accordance with section 47(6) of the PATI Act, the Information Commissioner is required to issue a decision on this matter.
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. Neither party provided submissions.

## **Information Commissioner's analysis and findings**

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11. In coming to a decision on this matter, the Information Commissioner considered all of the information provided by both the Applicant and the Ministry. She is satisfied that no matter of relevance has been overlooked.

### ***Transfer of request – section 13(5) of the PATI Act and regulation 8 of the PATI Regulations***

12. Section 13(5) of the PATI Act requires a public authority to transfer a PATI request when the record requested is not held by that authority but, to the knowledge of that

authority, is held by one or more other public authorities. The Information Commissioner has set out the standards for transfer of a PATI request in Decision 11/2018, Bermuda Police Service. In short, before making a transfer a public authority must (a) determine that the record is not held by that public authority; and (b) know that another public authority holds the records.

*Public authority's submissions*

13. The Ministry did not provide submissions on whether its decision to transfer was correct.

*Applicant's submissions*

14. The Applicant did not make submissions on the search conducted by the Ministry during the facilitated resolution.

*Discussion*

15. The Ministry did not search the locations which potentially held the responsive records prior to transferring the PATI request. Instead, the Ministry only searched these locations during the Information Commissioner's review. The Ministry then identified responsive records.
16. As a result, the Information Commissioner is satisfied that the Ministry's decision to transfer the PATI request was not in accordance with section 13(5) of the PATI Act. The Ministry did not conduct a reasonable search before informing the Applicant that it held no records responsive to the PATI request and was transferring the request.
17. During this review, however, the Ministry conducted reasonable searches and identified responsive records. The Ministry also issued a new initial decision and provided the Applicant with access to the records in full.
18. The ICO verified the Ministry's additional search 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.

## Decision

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The Information Commissioner finds that the 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's decision to transfer the PATI request was not done in accordance with section 13(5) of the PATI Act.

The Ministry has now conducted a reasonable search, issued a new initial decision to the Applicant and disclosed the responsive records in full. The Information Commissioner does not require the Ministry to take any further action in response to this request.

## Judicial Review

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The Applicant, the Ministry, 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  
19 March 2020

## Appendix 1: Relevant statutory provisions

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### Public Access to Information Act 2010

#### Request for access

13 (1) . . .

(5) Where a request under this section is received by a public authority and any record requested is not held by that authority but, to the knowledge of that authority, is held by one or more other public authorities, the public authority that received the request shall, not later than five working days after receipt of the request cause a copy of the request to be given—

(a) to that other public authority; or

(b) in the case of more than one public authority, to the authority whose functions are, in the opinion of the head of the public authority that first received the request, most closely related to the subject matter of the request.

### Public Access to Information Regulations 2014

#### Transfer of requests

8 (1) As soon as practicable after receipt by the public authority of an application the information officer shall make a determination under section 13(5) of the Act as to whether the application should be referred to another public authority.

(2) Where an application is transferred to another public authority under section 13(6), the information officer shall within five working days dispatch correspondence to the applicant indicating that the public authority has transferred the application to the appropriate public authority, naming the authority.

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