

Decision Notice

Decision 03/2021: Department of Immigration

Naturalisation application records: failure to decide within statutory timeframe

Reference no: 20210210

Decision date: 19 March 2021

Summary

On 2 September 2020, the Applicant asked the Department of Immigration (**Department**) for a copy of records relating to their naturalisation application. 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 Act 2010.

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 2010 that was received by the Information Commissioner's Office on 10 February 2021.
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 include the following:

Date	Action
2 September 2020	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 14 October 2020.
16 October 2020	The Department issued an initial decision out of time.
30 October 2020	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 11 December 2020.

10 February 2021	The Applicant requested an independent review by the Information Commissioner.
2 March 2021	The Department was notified in writing that an application had been received from the Applicant. The Department was asked to comment on the application. The Department provided submissions to the Information Commissioner for consideration in this review.
16 March 2021	The Department provided additional submissions to the Information Commissioner.
18 March 2021	The Department issued an internal review decision to the Applicant.

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 30 October 2020, the Applicant sent the Department an email requesting an internal review. The Applicant did not receive an internal review decision by 11 December 2020.
3. On 10 February 2021, the Applicant requested an independent review of the Department's alleged failure to issue an internal review decision. The PATI Act requires a requester to ask the Information Commissioner to review a public authority's failure to issue an internal review decision within six weeks after that internal review decision was due. The Applicant's request for independent review, therefore, was late.
4. The Information Commissioner has the discretion to accept a late application for review under section 45(2) of the PATI Act. On 2 March 2020, the Information Commissioner exercised this discretion on the basis the Applicant did not receive an internal review

decision from the Department informing the Applicant of their right to an independent review by the Information Commissioner. The Information Commissioner also noted that this was the Applicant's first application asking for her independent review.

5. By a letter dated 2 March 2021, the Department was invited by the Information Commissioner's Office to make submissions on this application, as required by section 47(4) of the PATI Act. In its submissions made on the same day and on 16 March 2021, the Department accepted that it had not issued an internal review decision within the statutory timeframe. The Department explained that the internal review request was genuinely overlooked because the initial decision granted the Applicant access to the responsive records in whole.
6. It is a matter of fact 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.
7. During the course of this review, the Department provided the Applicant with an internal review decision dated 18 March 2021.
8. The Information Commissioner does not require the Department to take any further action at this time in relation to the Applicant's request for an internal review. The Information Commissioner commends the Department for its responsiveness and cooperation in this review.

Decision

The Information Commissioner finds that the Department of Immigration (**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.

During the course of this review, the Department issued an internal review decision. Consequently, the Information Commissioner does not require the Department to take any further action at this time in respect of this Decision.

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.



Gitanjali S. Gutierrez
Information Commissioner
19 March 2021

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