



Decision Notice

Decision 15/2021: Department of Child and Family Services

Local residential homes records: failure to decide within statutory timeframe

Reference no: 20211014-02

Decision date: 25 November 2021

Summary

On 4 February 2021, the Applicant asked the Department of Child and Family Services (**DCFS**) for records relating to local residential homes. The Information Commissioner has found that DCFS failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information Act (**PATI**) 2010.

The Information Commissioner has ordered DCFS to comply with the requirement to issue a decision on the request for an internal review on or before Thursday, 23 December 2021.

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 PATI Act that was received by the Information Commissioner's Office (**ICO**) on 14 October 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 timeframe.
3. Relevant dates include the following:

Date	Action
4 February 2021	The Applicant made a written PATI request to DCFS. DCFS acknowledged the request and assigned it no. 625.
18 March 2021	DCFS notified the Applicant that a six-week extension was needed, beyond the standard six-week initial response period that would have ended on 18 March 2021. The stated extended deadline was 28 April 2021.
25 April 2021	DCFS updated the Applicant that the extended deadline would not be met, due to unanticipated circumstances.
20 May 2021	The Applicant asked DCFS's Head of Public Authority, being the Permanent Secretary of the Ministry of Social Development and

	Seniors Headquarters (Ministry), for an internal review of the failure to provide an initial decision.
30 June 2021	The Applicant received an initial decision from DCFS's Information Officer, beyond the 12-week extended period from DCFS's receipt of the PATI request. On the same day, the Applicant asked DCFS's Head of Public Authority for an internal review of the substantive initial decision.
1 July 2021	DCFS's Head of Public Authority issued an internal review decision on the failure to provide a timely initial decision, as requested on 20 May 2021. This decision acknowledged that a substantive initial decision, along with disclosed records, had been issued the day before, and a new request for an internal review of it could be made.
	The Applicant did not receive an internal review decision about the substantive initial decision within six weeks of DCFS's receipt of their request for one, i.e. by 11 August 2021.
14 October 2021	The Applicant requested an independent review by the Information Commissioner, made out of time.
25 October 2021	The Information Commissioner exercised her discretion to accept the Applicant's late application. The ICO notified DCFS in writing of the Applicant's late application. DCFS was asked to comment on its alleged failure to provide an internal review decision.
	DCFS did not provide a written submission to the Information Commissioner for consideration in this review.

Information Commissioner's analysis and findings

Internal Review Decision

- 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 public 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.

5. On 30 June 2021, the Applicant emailed DCFS's Head of Public Authority requesting an internal review of the substantive initial decision. The Head of Public Authority replied the next day, asking the Applicant to provide more information about what they were challenging in this request for an internal review. The Applicant did not receive an internal review decision within the six-week timeframe, i.e. by 11 August 2021.
6. While the Head of Public Authority awaited the Applicant's clarification, a new Permanent Secretary was assigned to the responsible Ministry. The Applicant was informed of the personnel change on 25 August 2021. On 1 September 2021, the Applicant emailed the new Permanent Secretary with details of their reasons for challenging the initial decision, and offered for the six-week internal review timeframe to re-set as of the date of their email.
7. On 14 October 2021, the Applicant applied for an independent review by the Information Commissioner of DCFS's alleged failure to issue an internal review decision, suggesting 1 September 2021 was the relevant date of their request.
8. While validating the application, the ICO clarified that the Applicant's request of 30 June 2021 was the correct request for an internal review that started the Head of Public Authority's six-week timeframe for completing an internal review. As such, the Applicant had until 22 September 2021 to apply for an Information Commissioner's review. The Information Commissioner exercised her discretion to accept the application out of time in accordance with section 45(2) of the PATI Act, as she saw reason to do so under the circumstances.
9. By letter dated 25 October 2021, the ICO invited DCFS to make submissions on the review. On 16 November 2021, DCFS's Head of Public Authority acknowledged receipt of the ICO's correspondence and verbally offered some explanation on resource-related constraints that challenged them in providing timely responses on PATI matters, including to the Information Commissioner. Although a reasonable opportunity to make representations was provided, as required by section 47(4) of the PATI Act, no relevant submission was received explaining why DCFS did not issue an internal review decision within the statutory timeframe.
10. The Information Commissioner commends DCFS's Head of Public Authority for having tried to initiate a discussion with the Applicant, soon after receiving the request of 30 June 2021, to glean more information that might assist with the internal review. The Information Commissioner also acknowledges that the Applicant did not respond to the Head of Public

Authority in a timely manner. While the Head of Public Authority may have appropriately sought clarity from the requester, this action did not suspend or change the statutory deadlines under the PATI Act.

11. Public authorities are reminded that an internal review decision must be issued within the six-week timeframe. The Information Commissioner clarifies that, while a public authority may ask a requester to offer details on what is being challenged by an internal review request (as was done in this case on 1 July 2021), awaiting a requester's response does not pause or reset the statutory deadline for the head of the public authority to issue an internal review decision. Nor does it affect the deadline for a PATI requester to seek an independent review by the Information Commissioner when the public authority fails to issue a timely internal review decision.
12. Timeframes in the PATI Act support the public's right to access non-exempt records. A timely internal review decision, issued according to section 43(2), provides certainty for the PATI requester on the outcome of their request, even if the internal review decision were to affirm a denial of access as decided at the initial response stage. Importantly, the internal review decision, or the failure to provide a timely one, triggers the requester's right to an independent review by the Information Commissioner.
13. It is a matter of fact that DCFS did not provide the Applicant with an internal review decision of the substantive initial decision within the statutory timeframe. The Information Commissioner is satisfied that, in that instance, DCFS failed to comply with section 43(2) of the PATI Act and now orders the DCFS to issue an internal revision decision by Thursday, 23 December 2021.
14. The Information Commissioner also recommends that DCFS consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timeframe for issuing a decision on the request of 30 June 2021 for an internal review.

Decision

The Information Commissioner finds that the Department of Child and Family Services (**DCFS**) 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 Public Access to Information (**PATI**) Act 2010.

As set forth in the accompanying Order, the Information Commissioner orders DCFS 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, 23 December 2021**.

Judicial Review

Should the Applicant, DCFS, 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 DCFS 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
25 November 2021

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