

Decision Notice

Decision 17/2022: Customs Department

Customs duty figures: failure to decide within statutory timeframe

Reference no: 20220513

Decision date: 16 June 2022

Summary

On 13 January 2022, the Applicant asked the Customs Department for customs duty figures related to vector control products. This Decision has found that the Customs 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. During this review, the Customs Department issued an internal review decision to the Applicant. The Information Commissioner has not required further action in respect of this Decision.

Background

1. This Information Commissioner's Decision is for a 'failure to decide' application for review under Part 6 of the Public Access to Information (**PATI**) Act 2010, which was received by the Information Commissioner's Office (**ICO**) on 13 May 2022. It addresses a public authority's basic obligation to respond to a requester's internal review request within the statutory timeframe, not whether a public authority has properly denied access to a record.
2. In this Decision, relevant dates include:

Date	Action
13 January 2022	The Applicant made a written PATI request to the Customs Department (Department).
24 February 2022	The statutory deadline passed for the Department to issue an initial decision, i.e. within six weeks of the PATI request date.
9 March 2022	The Applicant made a timely request for the Head of Authority to conduct an internal review; such request was due within six weeks of the initial decision due date, i.e. by 7 April 2022.
20 April 2022	The statutory deadline passed for the Department to issue an internal review decision, i.e. within six weeks of its receipt of the Applicant's request for one.
13 May 2022	The Applicant requested an independent review by the Information Commissioner.

18 May 2022	The ICO notified the Department of this application for review and invited its comments. In response, the Department verbally updated the ICO on their efforts to fulfil the PATI request.
30 May 2022	The ICO received the Department's written submission, including an internal review decision that was issued to the Applicant (and copied to the ICO) on the same date. Both are considered below.
1 June 2022	The Department disclosed to the Applicant a set of records, and its decision to grant access to the requested records was set out in a letter dated 30 May 2022 from the Collector of Customs.

Information Commissioner's analysis and findings

Internal Review Decision

3. 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.
4. On 9 March 2022, the Applicant requested an internal review by the Head of Authority, who for purposes under the PATI Act is the Permanent Secretary for the Ministry of National Security Headquarters. While their request was acknowledged, the Applicant did not receive the Head of Authority's decision by 20 April 2022.
5. On 13 May 2022, the Applicant requested an independent review by the Information Commissioner of the Department's alleged failure to issue an internal review decision.
6. By letter of 18 May 2022, the ICO invited the Department to make submissions on this review, as the Information Commissioner is required to do under section 47(4) of the PATI Act. In its submission, the Department acknowledged that its internal review had not been completed by the statutory deadline. To evidence its now-compliance, the Department copied the ICO in its internal review decision as issued to the Applicant on 30 May 2022, and forwarded the Applicant's email confirming receipt.

7. The Head of Authority's decision of 30 May 2022 apologised for missing the statutory timeframes for processing the PATI request and explained the Applicant's rights of review. On 1 June 2022, the Department granted the Applicant access to the requested records. As clarified with the ICO, the Department's decision in response to the Applicant's internal review request is comprised of both its 30 May and 1 June 2022 letters.
8. The Information Commissioner commends the Department for working to bring itself into compliance with the missed PATI deadlines, all within two weeks of being notified of this independent review (and six weeks past the internal review due date).
9. The Information Commissioner offers some clarification on a PATI requester's rights of review in similar cases where, by the time the requester has made a valid request for the head of a public authority to conduct an internal review, the public authority has yet to issue an initial decision on the substantive question of access to the requested record. This is to support the work of public authorities to communicate accurate information about the PATI process to requesters.
10. Commonly in access to information regimes, the lack of a timely decision is known as a 'deemed refusal' of the request for a public record.¹ Once the initial decision period has passed, the PATI request has effectively been denied by the public authority's information officer, who then is no longer the statutory decision maker under the PATI Act. After the requester has made a valid request for an internal review, the head of the public authority becomes the decision maker on the PATI request.² The internal review is the public authority's time to look at the PATI request anew and make a fresh decision on consideration of all relevant factors. Along with addressing procedural issues (e.g. why a statutory deadline was not met) and correcting any action taken (or not taken), the internal review outcome must answer the requester's substantive question of whether the public authority is granting or denying access to the requested record.
11. Nothing in the PATI Act prevents the head of a public authority from relying on an information officer, or other officer, to continue (or start afresh) with searching for and

¹ For example, Ireland's Freedom of Information Act 2014 (FOI) sets out a process similar to the PATI Act, and the Irish ICO published an investigation report on authorities' compliance with statutory timeframes for processing requests and other matters; see 'The Freedom of Information Act: Compliance by FOI Bodies' (January 2020), available at oic.ie/publications/special-reports/investigations-and-compliance-reports/. The report, at page 10, explained that "[w]here an FOI body fails to issue a timely decision on a request (first stage) or following internal review (second stage), a requester is entitled to treat the body's failure as a deemed refusal of the request".

² Section 43(1) of the PATI Act states that the "internal review...shall be conducted by the head of the public authority". If the request for an internal review is made in writing, to the correct public authority, and within six weeks of the initial decision due date, then it is valid; see the Minister's [PATI Practice Code](#) at paragraphs 26.1 to 26.6 for a summary.

processing responsive records during an internal review. Where the requester's reason to ask for an internal review is that no initial decision on access has been made, the head of the public authority may ask the assigned information officer to provide a draft proposal on access to the requested record, for the head's consideration.

12. However, the timeframe to complete all internal work needed before the head of the public authority's decision is ultimately issued to the PATI requester is six weeks from when they ask for an internal review.³ Such period is not extendable under the PATI Act, and the extension of time provision in section 15 does not apply. Where a public authority has allowed these statutory deadlines to lapse, its efforts to bring itself into compliance with the PATI Act must avoid placing an additional unfair burden on the requester who is entitled to a timely response on whether access to the requested record is granted or denied.⁴
13. To be clear, a public authority must not mistake the responsibility for its head to conduct an internal review as the same approach required by the Information Commissioner in a 'failure to decide' application for review. The head of a public authority may make a finding on whether the public authority has complied with the statutory timeline to issue an initial decision⁵. But the PATI Act does not authorise them to send a PATI request back to an information officer during an internal review and require that officer to issue a late initial decision.
14. Doing so effectively prolongs the public authority's timeline for processing a PATI request outside of what the PATI Act permits. After the six-week internal review timeline expires, the correct next stage is an independent review by the Information Commissioner, if the requester (or third party) asks for one.
15. 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.
16. During the course of this independent review, the Department completed its internal review and issued its internal review decision to the Applicant. The Information Commissioner is satisfied that, as at 1 June 2022, the Department has issued a valid decision

³ The Information Commissioner presented to public authorities on 'The basics of processing a PATI request – learning lessons from the ICO' (September 2021), as a refresher on taking an organised approach to handling PATI requests, so that the PATI Act's statutory timeframes can be consistently met; available at ico.org.uk/publications.

⁴ In her [Annual Report 2021](#), at pages 26-27, the Information Commissioner commented on a concerning trend of public authorities not meeting the PATI Act's statutory timeframes.

⁵ Section 41(h) of the PATI Act states that a requester or third party can seek an internal review of any failure by the authority to take any action that is required under the PATI Act, including "a failure to do anything relating to a request within the time required" by the PATI Act.

by the Head of Authority under section 43 of the PATI Act, which is capable of independent review under section 45(1)(a) if the Applicant were to make a new application to the Information Commissioner.

17. The Information Commissioner does not require the Department's further action on the Applicant's request for an internal review. The Information Commissioner expresses appreciation to the Department for its responsiveness, cooperation and efforts to bring itself into compliance with the PATI Act.

Decision

The Information Commissioner finds that the Customs 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 Public Access to Information Act 2010. Since the Customs Department has issued an internal review decision during this review, the Information Commissioner does not require the Customs Department to take any further action 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
16 June 2022

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