

Decision Notice

Decision 26/2022: Department of Immigration

Records related to British Overseas Territory Citizen application

Reference no: 20210427

Decision date: 28 October 2022

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Department of Immigration (**Department**) for all records created by the Department for the Applicant's British Overseas Territory Citizen application. The Department's initial decision granted the PATI request in full. The Applicant asked for an internal review because the disclosures for the PATI request appeared to be incomplete. The Department's internal review decision upheld its initial response.

The Information Commissioner has found that the Department did not conduct a reasonable search as required by section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations 2014 before responding to the PATI request.

The Information Commissioner has ordered the Department to conduct a reasonable search and issue a new initial decision to the Applicant on newly identified records, if any.

Relevant statutory provisions

Public Access to Information Act 2010: section 12(2)(b) (reasonable search).

Public Access to Information Regulations 2014: regulation 5 (reasonable search).

Appendix 1 provides the text of these statutory provisions and forms part of this Decision.

Background

1. On 2 September 2020, the Applicant made a Public Access to Information (**PATI**) request to the Department of Immigration (**Department**) asking for all email correspondence, written and digital records and notes, and paperwork created by the Department regarding the Applicant's British Overseas Territories Citizen (**BOTC**) application. The PATI request further states: "In particular all [emails], notes, and paperwork regarding the application made by [a particular public officer within the Department]. Additionally, the application included a handwritten note detailing all of the contents of the application. A request is made for this as well".
2. On 16 October 2020, the Department issued an initial decision informing the Applicant that the request was granted in whole. The initial decision provided the Applicant with two records responsive to the PATI request, namely, a completed Checklist Naturalisation (**Checklist**) and the Applicant's handwritten note (undated). The initial

decision also included a set of documents which, while related to the Applicant's BOTC application, were not created by the Department and thus were not responsive to the PATI request.

3. On 30 October 2020, the Applicant sought an internal review by the head of authority for the Department. The Applicant was not satisfied with the disclosure, "most notably" because the disclosed Checklist appears to be incomplete. The Applicant highlighted that the 'notes/follow up' section of the Checklist did not mention any requested follow up, even though the Department contacted the Applicant at least four times in this regard.
4. On 18 March 2021, the Department issued its internal review decision upholding the initial decision¹.
5. On 27 April 2021, the Applicant made a timely application for an independent review by the Information Commissioner of the Department's internal review decision.

Investigation

6. The application to the Information Commissioner was accepted as valid. The Information Commissioner confirmed that the Applicant made a valid request for an internal review to a public authority. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
7. On 10 June 2021, the Information Commissioner's Office (**ICO**) notified the Department of the valid review application. The Information Commissioner decided that early resolution under section 46 of the PATI Act was appropriate but the parties' consent could not be obtained.
8. On 16 June 2021, the ICO Investigation Officer discussed the general processing procedures of BOTC applications with a senior officer in the Department.
9. Section 47(4) of the PATI Act requires the Information Commissioner to give the public authority and the applicant a reasonable opportunity to make representations. Both the Department and the Applicant were invited to comment on the reasonableness of the Department's search.

¹ Issued in response to the Information Commissioner's [Decision 03/2021](#), [Department of Immigration](#).

Information Commissioner's analysis and findings

10. In coming to this Decision, the Information Commissioner considered all of the relevant information provided by the parties. She is satisfied that no matter of relevance has been overlooked.

Reasonable search – section 12(2)(b) and regulation 5

11. Section 12(2)(b) of the PATI Act requires public authorities to make every reasonable effort to respond to PATI requests completely and accurately. Regulation 5 of the PATI Regulations 2014 requires the public authority to make reasonable efforts to locate records responsive to the request. A public authority is required to document its efforts if it has been unable to locate the records. Read together, these provisions require public authorities to conduct a reasonable search in response to a PATI request.
12. In reviews where the reasonableness of a public authority's search is in question, the Information Commissioner's task is to assess whether the search was reasonable, in accordance with the provisions of the PATI Act and Regulations. It is not her role to assess whether a public authority should or should not hold a record as a matter of good public administration.
13. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following²:
 - [1] the quality of the public authority's analysis of the PATI request;
 - [2] the scope of the search that it decided to make based on that analysis; and
 - [3] the rigour and efficiency with which the search was then conducted.
14. Finally, the public authority bears the burden to establish, on the balance of probabilities, that the search it conducted to locate records responsive to a PATI request was reasonable.

Public authority's submissions

15. The Information Commissioner considers the Department's initial and internal review decisions, along with its communications with the ICO during this review. At the internal review stage, the Department understood the Applicant's main concern to be the

² See, for example, [Decision 11/2020](#), [Department of Education](#), para. 14.

absence of notes in the Checklist documenting the follow up contacts made by one of the Department's officers during the BOTC application process.

16. In communications with the ICO, the Department further expressed its understanding that because the PATI request made reference to a particular officer, the Applicant was interested in records created only by that officer.
17. The Department explained that the Checklist is used for recording outstanding documents and to verify that it has received the required documents. It is not used for documenting administrative actions such as follow up calls, emails or other communication mediums with applicants. The Department further explained that it did not have a formal process which necessitates that officers record phone calls with applicants.
18. The Department further explained that it ordinarily stored records on BOTC naturalisation applications in each individual applicant's physical file, the Department's vault, as well as electronically on the AS400 system. The Department also confirmed that its staff correspond internally via email about BOTC naturalisation applications. Regarding the Applicant's BOTC application, the Department confirmed that records concerning the application were stored in the Applicant's file. The Department also stored a copy of the Applicant's certificate of oath in its vault. The Department further confirmed that the AS400 system contains information about the Applicant's BOTC application and that the information is printable.
19. The Department stated that ordinarily its administrators receive and check the completeness of the BOTC applications against the Checklist. Once complete, the administrators forward the applications to its Client Service Officers (CSO), who have more technical knowledge of the relevant law. The Department explained that, at times, its Managers and the Assistant Chief Immigration Officer (**ACIO**) are involved in the process.
20. The Department confirmed that a Manager was involved with the processing of the Applicant's BOTC application, although during the review it could not confirm the specific individual. The Department informed the ICO of the Acting ACIO during the processing of the Applicant's BOTC.
21. The Department also explained that its officers who received the Applicant's BOTC application mainly used the telephone, instead of emails, to communicate with applicants. The Department explained that the staff might have had handwritten notes, but those notes were not included in the Applicant's BOTC application file.

22. With regard to BOTC applications, the Department explained that it is acting only as an administrator for the Office of the Governor (**Government House**). The Department receives the applications and confirms their completeness. Once it does this, the Department sends the relevant paperwork to Government House, who then makes decision on the approval of the applications. The Department's communications with Government House was at times done via email, though more often, the correspondence is delivered via the Government House courier. The Department explained that the packages it sends to Government House do not typically include cover letters.
23. In its internal review decision, the Department informed the Applicant that the Checklist was incomplete because the Acting Chief Immigration Officer pulled the Applicant's BOTC application, reviewed it for completeness and sent it to the Deputy Governor's Office.
24. The Department explained that the Applicant's BOTC application was expedited and processed within eight months. It further stated that because the application was deemed complete after the Applicant submitted the outstanding documents to the Department, the number of follow up calls that the Department staff made was of little significance. The Department also believed that it was of little significant that there was no record of the follow up calls.

Applicant's submissions

25. The Applicant did not respond to the invitation to make submissions, but explained in their application to the Information Commissioner that they were not satisfied with the disclosures made by the Department at the initial stage. The Applicant referred to the Checklist that they believed to be incomplete because it did not mention any of the follow up requests by the Department.
26. The Applicant believed that "additional notes" existed because the Department's staff contacted them at least four times requesting follow up.
27. The Applicant challenged the Department's claims that a number of follow up calls as well as the existence of the records documenting them were of little significance because the BOTC application was deemed complete and approved within the processing timeline. For the Applicant, those claims show that the Department assumed that the PATI request was filed to expedite the Applicant's BOTC application. The Applicant explained that the assumption was unsubstantiated and obfuscated a proper investigation into the matter. The Applicant stated that they had never relayed their reasons for making the PATI request to the Department.

28. The Applicant explained that their PATI request was prompted by their experience with the Department's officer who was receiving and processing their BOTC application, whom the Applicant claimed had lost some of the documents submitted to support their BOTC application. The Applicant also claimed that the officer was not responsive to their email. The Applicant believed that the Department was either acting with ill-intent or was reckless in its record-keeping.
29. The Applicant noted the Department's explanation in its internal review decision that it did not have a policy about recording contacts with BOTC applicants. The Applicant submitted that, if true, this presents a serious breach of best practice when dealing with members of the public.
30. The Applicant also requested that the Information Commissioner investigate whether the Department has properly and completely disclosed the records responsive to the PATI request. The Applicant believed that disclosing the operations of the Department is in the public interest. The Applicant requested that the Information Commissioner further decide whether the Department's practice of requesting additional information from BOTC applicants, without recording those requests, is in keeping with best practice.

Discussion

31. The Information Commissioner considers the reasonableness of the Department's search to locate records responsive to the PATI request for all email correspondence, written and digital records and notes, and paperwork created by the Department. She does not consider the Department's response to the request for the Applicant's handwritten note because the responsive record was disclosed in the initial response to the request and the Applicant did not challenge the response to this part of the PATI request.

[1] The quality of the public authority's analysis of the PATI request

32. The parties agree on which BOTC application the PATI request refers. Based on the plain reading of the PATI request, it is asking for all records regarding the Applicant's BOTC application that have been created by the Department. It did not include, for example, all of the records created by the Applicant or third parties which were submitted to the Department in support of the BOTC application.
33. The Department's communications with the ICO may suggest that it understood the PATI request to seek record created only by the officer who received the BOTC application. To the extent that this is true, such an understanding of the PATI request is too narrow. Although the reference to the officer in the PATI request was preceded by the phrase "in particular", this phrase is not meant to limit the scope of the PATI request. The plain

meaning of ‘in particular’ is “especially (used to show that a statement applies to one person or thing more than any other)”³. By using the phrase in their PATI request, the Applicant only mean to convey that while they want all records relating to the BOTC application created by the Department, they were especially interested in those created by the identified officer.

34. Because of the BOTC application, the Applicant and the Department had a history of interaction prior to the filing of the PATI request. The Department was aware that the Applicant was not satisfied with the manner in which its officers handled the Applicant’s BOTC application. Under these circumstances, it is important for a public authority to be careful not to blur boundaries between its past interactions with an individual outside of the PATI process and the handling of a PATI request made by the same individual. Public authorities should also refrain from attributing reasons or motives for making a PATI request, because in most cases, motives or reasons should not be considered by virtue of section 12(3) of the PATI Act. Attributing motives for making PATI requests places public authorities at risk of inadequately analysing PATI requests too narrowly, as may have happened in this case.
35. In its internal review decision, the Department focused its attention on the Checklist. The Department’s internal review decision upheld its initial response, without discussing whether the search at the initial decision stage was reasonable or whether its response was complete. The Department’s focus on the Checklist and follow up notes may also have been prompted by how the Applicant wrote their request for an internal review, stating that “Most notably, [the Checklist] seems incomplete”. This reference to the Checklist is illustrative only and does not narrow the scope of the PATI request. Further, nothing in the correspondence between the Department and Applicant shows that the Department attempted to clarify or better understand the scope of the PATI request with the Applicant.
36. Given the above, the Department’s analysis of the PATI request was inadequate.

[2] The scope of the search that it decided to make on the basis of that analysis
37. The Department’s inadequate analysis of the PATI request led to a limited scope of its search for responsive records. It is noticeable that the set of records disclosed to the Applicant did not include any emails, despite the PATI request’s specific reference to emails, among other records. The Department explained in its communications with the

³ Oxford Dictionary of English (3rd ed. 2010).

ICO that ordinarily a BOTC application is handled by an administrator, a CSO and, at times, a Manager as well as the Assistant CIO. The Department indicated that a CSO and Manager were involved in the processing of the Applicant's BOTC application. The Department's internal review decision also confirmed that the Acting CIO was involved. Under these circumstances, it would be reasonable to search the emails of the relevant officers to locate the records responsive to the PATI request.

38. While the Department explained that AS400 stores information relating to the Applicant's BOTC application, in the absence of the Department's submissions, it remains unclear whether the system was searched to locate any responsive records. The Department did not provide any information or documentation which would allow the Information Commissioner to verify and confirm the scope of its search. It also remains unclear if the Department asked the identified officer to clarify their practice for recording contacts with BOTC applicants and to locate any responsive records.
39. Because the Department did not show that the emails of the relevant individuals were searched, and nothing indicates whether AS400 and the identified officer's non-email sources were searched, the Information Commissioner is not satisfied that the scope of the Department's search was adequate.

[3] The rigour and efficiency with which the search was then conducted

40. Because the analysis of the PATI request and the scope of the search were inadequate, the Information Commissioner need not consider the rigour and efficiency with which the search was conducted.

Conclusion

41. The Information Commissioner is not satisfied that the Department conducted a reasonable search to locate records responsive to the PATI request, in accordance with section 12(2)(b) of the PATI Act and regulation 5 of the PATI Regulations.
42. The Information Commissioner notes the Applicant's request to decide whether the Department's practice of not recording its requests to BOTC applicants is in keeping with best practice. The Information Commissioner's remit under the PATI Act is to review the internal review decision made by the head of a public authority⁴, and does not extend to

⁴ [Peter Furbert v the Department of Human Resources and the Information Commissioner \[2019\] SC \(Bda\) 19 Civ \(15 March 2019\)](#), para. 17 ("First, the jurisdiction of the IC under the PATI Act is to review the decision made by the head of a public authority and if appropriate to order the production of documents which come within the scope of the PATI Act. It is a limited jurisdiction".).

interfering with a public authority's day-to-day practices. Nevertheless, the question of records management within public authorities raised by the Applicant highlights, again, the importance of an efficient and uniformly applied records management policy across all public authorities. Indeed, section 60(2) of the PATI Act requires the Minister to "establish codes of practice for public authorities regarding the maintenance and management of records of public authorities in a manner that facilitates ready access to the records". Publication of the practice code on records management—along with improvements with information and records management launched by the Government's 2019 reform initiatives⁵—will greatly assist government departments and the public in the management and exchange of public information.

⁵ See The Cabinet's Office's [Government Reform Strategic Plan](#) (February 2019).

Decision

The Information Commissioner finds that the Department of Immigration (**Department**) did not conduct a reasonable search for records responsive to the Applicant's request, in accordance with section 12(2)(b) of the Public Access to Information (**PATI**) Act 2010 and regulation 5 of the PATI Regulations.

In accordance with section 48 of the PATI Act, the Information Commissioner:

- annuls the Department's internal review decision; and
- orders the Department to conduct a reasonable search as instructed in the confidential cover letter to this Decision and issue a new initial decision on any additional responsive records that are identified, i.e., decide to withhold or disclose them.

The Information Commissioner requires the Department to issue a new initial decision, as directed by this Decision and the accompanying Order, on or before **Friday, 9 December 2022**.

Judicial Review

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

Enforcement

This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Department 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
28 October 2022

Appendix 1: Relevant statutory provisions

Public Access to Information Act 2010

Access to records

12 (1) ...

(2) Public authorities shall make every reasonable effort to—

(a) ...

(b) respond to requests completely, accurately and in a timely manner.

...

Public Access to Information Regulations 2014

Reasonable search

5 (1) An information officer shall make reasonable efforts to locate a record that is the subject of an application for access.

(2) Where an information officer has been unable to locate the record referred to in paragraph (1), he shall make a record of the efforts he made.

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