

Decision Notice

Decision 10/2023: Department of Corrections

Records on Covid-19 cases at Westgate and meetings with Minister: failure to decide within statutory timeframe

Reference no: 20230515-02

Decision date: 28 June 2023

Summary

On 2 February 2023, the Applicant asked the Department of Corrections (**Department**) for records relating to Covid-19 cases at the Westgate Correctional Facility and the Department's meetings with the Minister of National Security. The Information Commissioner has found 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.

The Information Commissioner has ordered the Department to comply with the requirement to issue a decision on the request for an internal review on or before **Wednesday, 26 July 2023**.

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 15 May 2023. 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
2 February 2023	The Applicant made a written PATI request to the Department of Corrections (Department).
16 March 2023	The statutory deadline passed for the Department to issue an initial decision, i.e., within six weeks of the PATI request date.
30 March 2023	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 27 April 2023.
11 May 2023	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.

15 May 2023	The Applicant requested an independent review by the Information Commissioner.
24 May 2023	The ICO notified the Department of this application for review and invited its comments.
16 June 2023	The ICO received the Department's submissions, which are considered below.

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 30 March 2023, the Applicant requested an internal review by the Department's Head of Authority, who for purposes under the PATI Act is the Permanent Secretary for the Ministry of National Security. The Applicant did not receive an internal review decision by 11 May 2023.
5. On 15 May 2023, 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 dated 24 May 2023, 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.
7. In his submissions to the ICO, the Head of Authority explained that he was unable to determine if an internal review was conducted and a decision was issued, because his assignment with the Ministry of National Security started shortly before the timeline to issue an internal review decision expired. The Head of Authority confirmed that his immediate predecessor had started the internal review process but he could not confirm if the review was concluded. The public authority also acknowledged that it did not provide

a timely initial response to the PATI request and that the public authority was working to provide a response now.

8. 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 and now orders the Department to issue an internal review decision by Tuesday, 25 July 2023. The Department also may wish to consider apologising to the Applicant.

Decision

The Information Commissioner finds that the Department of Corrections (**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 (**PATI**) Act 2010.

As set forth in the accompanying Order, the Information Commissioner orders the Department 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 **Wednesday, 26 July 2023**.

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.

Enforcement

This Decision has been filed with the Supreme Court, according to 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 June 2023

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