

## Decision Notice

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**Decision 32/2023: Ministry of Economy and Labour Headquarters**

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### **Non-anonymised Employment Tribunal decisions**

**Reference no: 20221115**

**Decision date: 8 September 2023**

## Summary

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The Applicant submitted a request under the Public Access to Information (**PATI**) Act 2010 to the Ministry of Economy and Labour Headquarters (**Ministry Headquarters**) for all non-anonymised public decisions of the Employment and Labour Relations Tribunal since June 2021. The Ministry Headquarters' internal review decision refused the PATI request under section 4(1)(a) which excludes records relating to the exercise of judicial or quasi-judicial functions by any court, tribunal or other body or person as well as the section 37(1) (disclosure prohibited by other legislation) exemption.

The Information Commissioner has upheld the Ministry Headquarters' internal review decision to deny access because the records fall outside the scope of the PATI Act by virtue of section 4(1)(a).

## Relevant statutory provisions

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Public Access to Information Act 2010: section 4 (application).

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

## Background

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1. On 4 July 2022, the Applicant made a Public Access to Information (**PATI**) request to the Ministry of Economy and Labour Headquarters (**Ministry Headquarters**), asking for all public decisions of the Employment and Labour Relations Tribunal (**Tribunal**) since 1 June 2021.
2. On 21 September 2022, the Ministry Headquarters issued an initial decision refusing the PATI request under section 16(1)(f) of the PATI Act, on the basis that the requested records were in the public domain and were reasonably accessible or available to the public at no charge. The initial decision further provided the Applicant with the relevant URL link and explained that the publication of the requested Tribunal decisions were required by the Employment Act 2000 (**Employment Act**). Because those decisions would be readily available to the public, the Applicant was informed that a PATI request was not necessary to obtain them.

3. In their internal review request of 27 September 2022, the Applicant clarified that they were seeking non-anonymised decisions and not the anonymised ones that were available online.
4. The Ministry Headquarters issued its internal review decision on 4 November 2022, refusing the PATI request under section 4(1)(a), which excludes records relating to the exercise of judicial or quasi-judicial functions by any court, tribunal or other body or person. It also relied on section 37(1) to justify the refusal of the PATI request, because the Ministry Headquarters believed that disclosure of the non-anonymised decisions of the Tribunal is prohibited by the Employment Act, in that disclosure would be in contrary to section 44F(2) of the Employment Act.
5. The internal review decision explained that, according to section 44F(2) of the Employment Act, the Tribunal is required to notify the relevant Minister of concluded decisions. The Minister is then required to, no later than 90 days after the conclusion of the hearing, cause the award to be made public. The internal review decision further explained that if the parties wish to conceal any matters in the decision (including if they were a party), they must inform the Tribunal of such wish prior to the Minister publishing the awards. The Tribunal will in turn give directions as to the action that shall be taken to conceal these matters in the publication.
6. The Ministry Headquarters informed the Applicant in its internal review decision that, since 1 June 2021 when the provisions relating to the publication of decisions in section 44F became effective, parties had not been advised by the Tribunal that their decisions would be published. Neither were the parties provided with the opportunity by the Tribunal to conceal information. As of the time of the internal review decision, however, all parties involved in Tribunal decisions since 1 June 2021 had been provided the opportunity to be advised of the publication and have confirmed what information they wished to conceal. Accordingly the relevant Tribunal decisions have now been republished to the Government portal to take into account the requests of the parties involved.
7. On 15 November 2022, the Applicant made a timely application for an independent review by the Information Commissioner of the Ministry Headquarters' internal review decision.

## **Investigation**

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8. 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 issue the Applicant wanted her to review.

9. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate, because submissions were required from the Ministry Headquarters to determine whether its reliance on section 4(1)(a) and the exemption was justified.
10. On 6 December 2022, the Information Commissioner's Office (**ICO**) notified the Ministry Headquarters of the Applicant's valid application. At the time, the Information Commissioner did not require the Ministry Headquarters to grant her access to the responsive records, given the decision in [Attorney General v Information Commissioner](#) [2022] SC (Bda) 6 Civ (25 January 2022). In that case Puisne Judge Shade Subair Williams had found that the Information Commissioner did not have the power to examine records that a public authority claimed to fall outside the scope of the PATI Act by virtue of section 4(1).
11. On 24 March 2023, before this review was concluded, the Court of Appeal overturned the Supreme Court's decision<sup>1</sup>. Even so, the Information Commissioner did not require the Ministry Headquarters to submit the responsive records because the Information Commissioner (along with the public) has access to the anonymised versions of the decisions of the Tribunal, which are sufficient for the Information Commissioner's determination whether the records would fall within the scope of section 4.
12. 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. The Ministry Headquarters and the Applicant were invited to make submissions during this review and to comment on the ICO Investigator's preliminary view that the Ministry Headquarters was justified in relying on section 4(1)(a) to refuse the PATI request. The Ministry Headquarters confirmed that it did not wish to make further comment. The Applicant did not comment on the preliminary view, but provided some information in their earlier correspondence with the ICO.

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<sup>1</sup> In [Information Commissioner v Attorney General](#) [2023] CA (Bad) 6 Civ (24 March 2023), the Court of Appeal overturned Justice Subair Williams's ruling and found that the Information Commissioner has the power to examine records that public authorities claim to fall outside the scope of the PATI Act under section 4(1). The Court of Appeal did not disturb Justice Subair Williams's findings on the meaning of records relating to general administration and their distinction with records related to the functions of those public authorities, bodies and persons listed in section 4.

## Information Commissioner’s analysis and findings

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13. In coming to this Decision, the Information Commissioner considered all the relevant submissions, or parts of submissions, from the Ministry Headquarters and the Applicant. She is satisfied that no matter of relevance has been overlooked.

### *Applicability of the PATI Act – section 4(1)(a)*

14. Justice Subair Williams explained in [Attorney General v Information Commissioner](#), para. 24, that the “scope of the application of the PATI Act may be determined by section 4 which lists the classes of material to which the legislation does not apply”. Under section 4(1)(a), the PATI Act does not apply to “records relating to the exercise of judicial or quasi-judicial functions by any court, tribunal or other body of person”. Relevant to this review are records relating to the exercise of a tribunal’s quasi-judicial functions.
15. The provision in section 4(1)(a) does not mean that the public does not have the right to ask for records relating to the exercise of a tribunal’s quasi-judicial functions. The public can make a PATI request for those records, and public authorities must respond to their requests in accordance with the provisions of the PATI Act<sup>2</sup>. A public authority is justified to deny public access to those records if it can show that the records fall under the category prescribed in section 4(1)(a).
16. Section 4(2) provides that records relating to the court’s general administration continue to fall within the scope of the PATI Act. In interpreting the scope of section 4(2), Justice Subair Williams in [Attorney General v Information Commissioner](#), para. 37, adopted the definition of ‘general administration’ set out by the Irish Information Commissioner, i.e., records relating to personnel, pay matters, recruitment, accounts, information, technology, accommodation, internal organisation, office procedures and the like.<sup>3</sup>

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<sup>2</sup> Sir Christopher Clarke explained in [Information Commissioner v Attorney General](#) [2023] CA (Bda) 6 Civ, at para. 75: “I would hold that, until it has been accepted by the requester, or determined by the Commissioner, that the records which are sought are excluded from the operation of the PATI Act ... they cannot be treated as so excluded. Accordingly, [the PATI requester] was entitled, under section 45, to apply to the Commissioner for a review of the decision made by the [Head of Authority] in respect of the records which she sought, and the Commissioner was entitled to commence a review of the matter” under section 47.

<sup>3</sup> In [Decision 02/2019, Office of the Governor](#), para. 20, the Information Commissioner adopted this definition of ‘general administration’ as applied by the Irish Information Commissioner. See also [Decision 09/2021, Human Rights Commission](#), at para. 17; [Decision 05/2020, Human Rights Commission](#), at para. 15; [Decision 19/2019, Internal Audit Department](#), at para. 19; and [Decision 21/2022, Office of the Governor](#), at para. 13.

17. In sum, for a record to be excluded from the scope of the PATI Act by virtue of section 4(1)(a), the following must be considered:

[1] What or who is the relevant court, tribunal or other body or person whose functions are being considered?

[2] What is the relevant exercise of a judicial or quasi-judicial function to which the record relates?

[3] Does the record relate to the general administration of the court, tribunal or other body or person and come within the scope of the PATI Act by virtue of section 4(2)(a)?

*Public authority's submissions*

18. After issuing its internal review decision and receiving the ICO Investigator's preliminary view, as explained in paragraph 12 above, the Ministry Headquarters declined to make further submissions.

*Applicant's submissions*

19. The Applicant challenged the Ministry Headquarters' internal review decision because they were not clear how section 44F(2)-(3) of the Employment Act prohibits disclosure of the parties' names. In the Applicant's view, the section cited does not seek to anonymise decisions. The Applicant pointed out that they would expect the Employment Act to be in line with other jurisdictions, such as the United Kingdom, where decisions are not anonymised.

*Discussion*

[1] What or who is the relevant tribunal whose functions are being considered?

20. The relevant tribunal is the Employment and Labour Relations Tribunal, established by section 44B of the Employment Act.

[2] What is the relevant exercise of a judicial or quasi-judicial function to which the record relates?

21. The records at issue are the non-anonymised decisions issued by the Tribunal. When issuing its decisions, the Tribunal is exercising its functions under section 44B(2) to "hear and determine (including by way of arbitration) complaints, labour disputes, differences, conflicts and other matters referred to it under the Employment and Labour Code".

[3] Does the record relate to the general administration of the tribunal and come within the scope of the PATI Act by virtue of section 4(2)(a)?

22. The Tribunal's decisions fall squarely within its statutory functions to determine the matters referred to it. The decisions do not relate to its general administration.

*Conclusion*

23. The Information Commissioner is satisfied that Ministry Headquarters was justified to refuse access because the requested records fall outside the PATI Act by virtue of section 4(1)(a).
24. The Information Commissioner also highlights that the Ministry Headquarters explained in its internal review decision that it has updated its procedures to allow for non-anonymised decisions to be published when appropriate, see paragraphs 5-6 above.

## Decision

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The Information Commissioner finds that the Ministry of Economy and Labour Headquarters (**Ministry Headquarters**) was justified to refuse access because the requested records fall outside the PATI Act by virtue of section 4(1)(a).

In accordance with section 48 of the PATI Act, the Information Commissioner upholds the Ministry Headquarters' internal review decision to refuse access under section 4(1)(a) because the records do not fall within the scope of the PATI Act.

The Information Commissioner does not require the Ministry Headquarters to take any further steps in relation to this review.

## Judicial Review

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The Applicant, the Ministry of Economy and Labour Headquarters 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.

Gitanjali S. Gutierrez  
Information Commissioner  
8 September 2023

**Public Access to Information Act 2010**

**Application**

- 4 (1) Subject to subsection (2), this Act does not apply to—
- (a) records relating to the exercise of judicial or quasi-judicial functions by any court, tribunal or other body or person; or
  - ...
- (2) The reference to records in subsection (1) does not include records relating to the general administration of—
- (a) any court, tribunal or other body or person referred to in subsection (1)(a); or
  - ...



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