

Decision Notice

Decision 44/2023: Department of Child and Family Services

Overseas placement records

Reference no: 20200124

Decision date: 13 December 2023

Summary

The Applicant made a request under the Public Access to Information (**PATI**) Act 2010 to the Department of Child and Family Services (**Department**) for records about Glen Mills Schools, an overseas child residential facility. While the Department released some records to the Applicant, it decided that most responsive records were exempt under sections 37 (disclosure prohibited by other legislation), 26 (information received in confidence) and 23 (personal information) of the PATI Act, or otherwise did not exist.

The Information Commissioner has found that the Department was justified to rely on section 37(1) to deny access to the responsive records, and that the Department had taken all reasonable steps before administratively denying parts of the request because the records did not exist. The Information Commissioner does not require the Department to take any further steps with respect to this PATI request.

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record does not exist or cannot be found); section 37 (disclosure prohibited by other legislation).

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

Children Act 1998: section 11 (disclosure of information).

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

Background

1. On 25 June 2019, the Applicant made a Public Access to Information (**PATI**) request to the Department of Child and Family Services (**Department**), asking for records about Bermuda's young people being placed at Glen Mills Schools, an overseas child residential facility, in Pennsylvania (**Glen Mills**).¹ The PATI request was assigned no. 565.
 - a. Item 1 asked how many students Bermuda had sent to Glen Mills up to the end of 2017.

¹ The Applicant made two other PATI requests seeking the Department's records about overseas placements, while the Department's internal review in this case was pending: on 26 November 2019, PATI request no. 581 asked for general data and records on overseas placements in the past 5 years (Decision 45/2023, review no. 20200826-02); and on 29 November 2019, PATI request no. 593 asked for records about Utah-based facilities in particular ([Decision 38/2023](#), review no. 20200826-01).

- b. Item 2 asked for records on any incidents reported at Glen Mills involving students from Bermuda, including (but not limited to): allegations of abuse, assault or rape; escape, missing or runaway; medical/psychological hospital admission; contraband; need for outside medical attention; medication error/lapse; police called for assistance; restraint 57; provider vehicle accident; and physical peer-to-peer aggression.
 - c. Item 3 asked how much money Bermuda had spent sending children to Glen Mills, broken down by financial year.
 - d. Item 4 asked for any communications between the Department and Glen Mills from 1 August 2018 to date.
 - e. Item 5 asked for any communications between the Department and Glen Mills during the year 2000 about the school's corrective action plan, produced after 8 students told state investigators they were assaulted at Glen Mills.
 - f. Item 6 asked for any contract that existed or had previously existed between the Department and Glen Mills.
 - g. Item 7 asked for details of the Department's staff visits to Glen Mills, including dates the visits had taken place, staff members who had attended and any reports as a result of the visits.
2. The Department did not issue an initial decision – though it acknowledged the PATI request on 26 June 2019 and attempted to extend the timeframe, albeit late, by letter of 9 August 2019.
 3. In September 2019, the Department's Information Officer communicated with the Applicant to explain delays and noted their desire to consult on modifying the PATI request due to challenges with obtaining some requested records. To preserve their right of review and not further delay, the Applicant asked for the Head of Authority's internal review on 24 September 2019.
 4. On 24 January 2020, the Department issued an internal review decision, out of time.² In its decision, the Department:

² The Department issued its internal review decision to the Applicant in compliance with the Information Commissioner's [Decision 33/2019](#) (in 'failure to decide' review no. 20191107). Prompted by the Information Commissioner's Office's follow-up, the Department affirmed that the Head of Authority was the person issuing its decision as sent on 24 January 2020 by the Information Officer, in an email on 27 January 2020 to the Applicant.

- a. explained that, while it estimated that client placements dated back to the 1980s, it could not release an accurate client count for item 1, due to its record management system (which was not designed to historically capture where a client was placed);
 - b. found all records located for item 2 to be exempt from public access;
 - c. released 18 financial years' worth of total annual amounts paid to Glen Mills, for item 3 – while noting its financial records prior to 2001 were not accessible;
 - d. disclosed three records³ not involving client communication for item 4, while it withheld all others as exempt;
 - e. found that its search yielded no records for item 5;
 - f. explained that, for item 6, the Department held no current contract and prior contracts were exempt—also noting that it was unable to give an accurate count of contracts held with Glen Mills over the years due to its record management challenge; and
 - g. explained that, for item 7, generating an accurate and comprehensive list of staff visits was not possible given its client file system and that any staff report on their visit was exempt.
5. Later that day on 24 January 2020, the Applicant asked for an independent review by the Information Commissioner.

Investigation

6. The Information Commissioner's Office (**ICO**) accepted the application as valid. The Information Commissioner confirmed that the Applicant had 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.

³ The item 4 records that were disclosed, with no redactions, were: (1) an email in October 2018 from Glen Mills's Director of Admissions to the Department's Psycho-Ed Coordinator that showed two 'accreditation' attachments—though the Department disclosed only one of the attachments (a letter from the Commission on Accreditation of Rehabilitation Services International to Glen Mills); (2) an email in February 2019 from Glen Mills's Director of Admissions to the Department's Director, Assistant Director and Psycho-Ed Coordinator with a subject 'plan of correction and article, external review panel'; and (3) an email blast in September 2019 from Glen Mills with a letter from its Acting Executive Director titled 'a new direction'.

7. The Information Commissioner decided that early resolution under section 46 of the PATI Act 2010 was not appropriate for this application, because examining the withheld records was required to evaluate the public authority's reliance on the provisions.
8. The ICO notified the Department of the valid application on 6 March 2020 and asked for the records responsive to items 2, 4 and 7. Due to the impact of the COVID-19 pandemic, the ICO's access to the records was delayed and extensions were granted to accommodate the Department's efforts.
9. On 10 June 2020, the Department sent a record category list and agreed for the ICO Investigator to inspect onsite the Department's hard copy materials, which the Information Officer had compiled during their search for the responsive Glen Mills records. On 16 June 2020, the Investigator reviewed the files in person, observed the efforts to locate potentially responsive records and discussed with the Information Officer their search approach, as described below.
10. Following this information gathering, by letter dated 15 July 2020, the ICO specified a list of records that the Information Commissioner required to examine, including:
 - a. a sample set of each type of record with client incident information (e.g., the facility's quarterly report, the facility's discharge report, an email exchange between the facility's staff and the Department's staff), which were already flagged on the client files as responsive to item 2;
 - b. the underlying records for item 3;
 - c. the three sets of printed emails for item 4; and
 - d. the service agreements, with covers and enclosures, which were already flagged on the client files as responsive to item 6.
11. On 4 August 2020, the Department submitted the hard copy records as the ICO requested. On 24 September 2020, the Investigator finished checking that they matched the ICO's expectation of their completeness.
12. As required by section 47(4) of the PATI Act, the parties were invited to make representations to the Information Commissioner. By letters of 2 and 7 November 2023, the Investigator shared a preliminary view that section 37 would have been appropriately engaged to deny public access under the PATI Act to the Department's overseas placement records. This reflected the Information Commissioner's [Decision 38/2023](#), recently issued on 31 October 2023, which had assessed the absolute exemption's

application in relation to the prohibition on disclosure in the Children Act 1998 (**Children Act**)—and was the first time doing so in an ICO review.

13. The Department's submissions of 14 November 2023 affirmed the Investigator's preliminary view and the Applicant acknowledged it on 27 November 2023. In considering the Applicant's position, their reasons in seeking access to the requested records as set out in their application follow-up emails on 29 January 2020, their earlier submissions of 3 July 2020 in response to the ICO's first invite letter to them on 14 May 2020, as well as relevant parts of their submissions as summarised in [Decision 38/2023](#), have been taken into account.
14. On 4 December 2023, the ICO notified the parties of an issue re-framing and set a five-day deadline to receive any final comment before the Information Commissioner issued her decision. No further comments were received from the Department or Applicant.

Information Commissioner's analysis and findings

15. The Information Commissioner has considered all relevant evidence, being satisfied that no matter of relevance has been overlooked.

Record does not exist or cannot be found – section 16(1)(a)

16. Public authorities are entitled under section 16(1)(a) to administratively deny a request if a requested record does not exist or cannot be found after all reasonable steps have been taken to find it.
17. Regulation 5 of the PATI Regulations 2014 requires public authorities, through their Information Officers, to make reasonable efforts to locate records responsive to a PATI request. Regulation 5(2) requires a public authority to document its efforts if it has been unable to locate any record.
18. When a public authority denies a PATI request under section 16(1)(a) because a record does not exist or cannot be found, the Information Commissioner's review does not determine to a point of certainty if a record exists or can no longer be located. Rather, the Information Commissioner is required to assess whether the public authority took all reasonable steps to find a record. Further, section 16(1)(a) does not concern whether a public authority should hold a record as a matter of good public administration.
19. In determining whether a public authority's search was reasonable, the Information Commissioner takes into account the following:

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

[2] the scope of the search that it decided to make on the basis of that analysis; and
[3] the rigour and efficiency with which the search was then conducted.

20. The specific circumstances in each case will inform the Information Commissioner's assessment.
21. Finally, the public authority bears the burden to establish, on the balance of probabilities, that responsive records do not exist or cannot be found after all reasonable steps have been taken to find them.⁴
22. The Information Commissioner now considers whether the Department had taken all reasonable steps to locate records responsive to items 1, 3, 5, 6 and 7, before deciding that they did not exist or could not be found for responding to the PATI request.

Public authority's submissions

23. Upon initially receiving the ICO's notice of this review, the Department's Information Officer submitted their written search documentation (as regulation 5 required them to maintain) and cooperated with the ICO in observing other aspects of their search efforts.
24. The Department's search evidence consisted of:
 - a. a search log with detailed notes on what was done (and when) to find responsive records and, as warranted, to compile data for all 7 items in the PATI request;
 - b. a certain number of client files, in hard copy alone, with stickie notes throughout to flag records potentially responsive to items 6 and 7—which were compiled by manual search after the Information Officer liaised with section heads, for them to search their files (including archived listings), and with the comptroller to access Glen Mills payment records from the Government of Bermuda's E-1 accounting system;
 - c. an imported copy of the e-mailboxes for three involved officers—the Director, the Assistant Director and the Psycho-Ed Coordinator—which was acquired directly from the Information and Digital Technologies Department (**IDT**) to enable the Information Officer's search of those officers' emails;⁵

⁴ See [Decision 04/2017, Department of Health](#), at paras. 37-49, and more recently [Decision 01/2023, Ministry of Legal Affairs and Constitutional Reform Headquarters](#), at paras. 30-35.

⁵ The search log indicated that part of the Department's delay in responding to the PATI request was due to initially conflicting information on the IT procedure in place to support Information Officers. There was also a documented

- d. 3 sets of printed emails based on the Information Officer’s email search for items 4 and 5—which showed results for item 4 alone for the Director’s emails, where Glen Mills was the sender or recipient but where some did not fall in the requested period, i.e., were from before August 2018; and
 - e. an E-1 report that listed the Department’s payments to Glen Mills for invoices dated from 31 March 2001 to 2 January 2019, with a second spreadsheet showing a calculated total per financial year based on the invoice batch dates—which supported the Department’s response for item 3 and evidenced that the Department’s E-1 inputting over the years did not consistently attach a client identifier to each payment entry.
25. The Department’s search evidence indicated the following. For item 1, a certain number of client files were selected for manual search based on the E-1 report and internal discussion. Some clients had more than one file. The Department estimated how many clients had attended Glen Mills but noted that the E-1 report could not be relied on to generate a complete list of client names, due to user inputting differences.
26. For item 3, financial records could not be located prior to April 2001. The search log noted that the E-1 report was “the only record we could locate regarding spending”. Some hard copy client files also held billing and payment records.
27. For item 5, records could not be located for the year 2000 because IDT was unable to retrieve emails from the requested year. Based on the e-mailboxes, the earliest communication with Glen Mills found was in October 2012 for the Director, January 2018 for the Assistant Director and November 2016 for the Psycho-Ed Coordinator.
28. For item 6, two signed, year-long purchase of service agreements existed for periods from July 2007 to June 2008 and from July 2008 to June 2009, as located on two client files. A third year-long agreement existed for the period 2018-2019, which was not signed but held on a client file. A fourth client file held enrolment-related consent forms that the Director had signed in February 2018, but did not hold a service agreement, and it appeared to have been the latest enrolment. Other client files held enrolment-related forms (e.g., contract addendums) for earlier years. Based on the client files, the E-1 report and the sets of emails, no current agreement was held, as it appeared that a client had not been placed at Glen Mills since December 2018.

attempt to access a fourth e-mailbox for a retired officer who had previously managed the overseas placements, where IDT had responded that it was unable to locate any account in the active directory or on the exchange servers.

29. For item 7, records related to staff visits (on when and who) were located within individual client files and in the sets of emails (e.g., staff travel itineraries and memos). During this review, the Department highlighted that, though this internal review decision had declined to give a staff visit list, the Department was able to include the responsive information a month later when issuing its initial decision for PATI request no. 581, considered in Decision 45/2023, review no. 20200826-02. For the part of item 7 asking for staff reports, the Department's record category list described that this information was contained in case file notes written by staff on their meetings with clients.
30. The Department's search log also commented that the Information Officer had spent at least 16 hours, outside of their usual working hours, to process this PATI request—further describing the search as “exhaustive” and “administratively demanding”.

Applicant's submissions

31. The Applicant explained that they wanted the Information Commissioner's review to verify the Department's search efforts. As a general matter, they wanted to know more information about the Department's client file system, because they did not believe they had a proper understanding of whether a search was done for current files or archived files, if at all. They wondered if the Department had simply decided that it would be too hard to provide the information.
32. The Applicant explained the type of information they wanted to know. For instance, whether the client files were digitised or searchable, what portion were archived and whether those were stored differently from non-archived ones, and whether the Department had searched its electronic files for Glen Mills references to try and start a list of client names. The Applicant further queried if the Department could estimate whether, based on the current state of its client file system, how much time it would have taken to then check and confirm Glen Mills placements or whether its search through files could have been staggered by alphabetical batches, to make its search more manageable over a period.
33. More specifically for item 1, the Applicant believed that there would have been a better way to compile a client count, for instance, by first asking the Psycho-Ed Coordinator to identify clients and allow for a more targeted search. The Applicant did not understand how the Department was able to give a breakdown on its spending (for item 3) but could not state how many clients were there for the same period.
34. Due to publicity surrounding abuse allegations against Glen Mills, the Applicant asserted that the Department, for its own purposes of contacting clients and looking into whether any of them had been subjected to abuse, should have created such a list. The Applicant

questioned how the Department could be operating effectively without being able to produce lists and reports on which clients had attended specific overseas institutions.

35. For item 3, the Applicant believed that the Department's spending would have dated back before 2001 and challenged whether earlier records, in fact, existed.
36. For item 5, the Applicant believed that records must have existed, because a Philadelphia newspaper reported that Glen Mills had been required to produce a corrective action plan in 2000 by a government agency investigating abuse claims. As the Department was its client, they found it reasonable to assume that Glen Mills had shared its plan with the Department.
37. For item 6, the Applicant believed that the Department must have had a general agreement in place for sending clients to Glen Mills, and that this general agreement should have been publicly released. If not, the Applicant submitted that they would have accepted the most recent client-specific agreement with exempt information removed.
38. Finally for item 7, the Applicant expected that the Department would have maintained a log of staff visits for its client overseas placements if only for its financial record-keeping. The Applicant commented that disclosing this record would have allowed the public to test the Department's public statement on the frequency of its visits to overseas institutions.

Discussion

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

39. The Department's understanding of the PATI request was accurate, complete and adequate in the circumstances. Each item was stated in specific, clear and narrow terms, with limited scope for ambiguity or different interpretations. The Department's search evidence showed that due care was taken to identify what types of records would hold the responsive information.
40. The quality of the analysis of the PATI request was adequate.

[2] The scope of the search that it decided to make on the basis of that analysis

41. As can be seen in both parties' submissions, the Department appeared to identify all locations that a reasonable person would have expected to hold records responsive to each item of the PATI request: namely, the e-mailboxes of the three most relevant senior officers, client files, and E-1.

42. Based on information the ICO reviewed in the client files, the Information Commissioner considered whether the Department would have needed to show that certain social workers had been asked to search their own files for item 7; for instance, where a staff member's name was seen in emails about clients placed at Glen Mills across several client files. For item 1, the Information Commissioner took note that some Glen Mills invoices had been kept on client files. But as explained below, the underlying records were appropriately exempt.
43. For item 6, the Information Commissioner also finds no reason to doubt the Department's explanation that any service agreement, if it existed, would be held on the client file. Even if copies were exchanged by email that would have confirmed if an agreement was ongoing at the time of the PATI request, they would have been located when searching the three e-mailboxes. The retired officer's e-mailbox would not have held a responsive record, and the client files were sufficient locations to access a sample of older service agreements.
44. For item 3, it was reasonable that the Department had worked backwards to compile data as far back as was accessible in E-1, the database that it had readily available.
45. For item 5, liaising with IDT was a reasonable step taken. The fact that IDT was unable to give the Information Officer access to the Director's emails older than October 2012 was acknowledged in its search evidence. The Information Commissioner considered if the Department would have been expected to approach a search for client files or other files that were older than 2001 in another way, given the Department's historical system categorised files by client name only—and not by the type of programme or service received—and was not digitised. It is on the public record that the current Director, Mr. Maybury, joined the Department in [December 1987](#). The Director's files, more than his e-mailbox, would have been reasonable locations to search exhaustively or at least to have explained in the Department's search evidence for item 5. But under the circumstances, the Information Commissioner is satisfied that the efforts made were sufficient to respond to a PATI request with seven items that required manual searches of hard copy files. Additional manual searches would have been disproportionate.
46. On balance, the Information Commissioner is satisfied that the scope of the Department's search for items 1, 3, 5, 6 and 7 was reasonable.

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

47. The Department's search evidence was comprehensive in showing that the search carried out had been rigorous. Any gaps in efficiency seemed to have stemmed from the Department's record management challenges. The Information Commissioner is satisfied

that the Department was justified in deciding that responsive records either did not exist or could not be found for items 1 and 5 and parts of items 3, 6 and 7. Further, the underlying records for each item would have fallen within the scope of the exemption in section 37, as discussed below.

48. Though the Department had refused item 1, a month later it released similar information to the Applicant in response to PATI request no. 581 (at items 3 and 5, covering 2015-2019). Since the Department's disclosure of the total numbers of clients placed overseas in that requested period had not been separated by facility, the Applicant would not have been able to rely on it to satisfy item 1 here.
49. Even still, it would not have been proportionate in these circumstances to require further action by the Department to respond afresh to item 1, because the E-1 report could not be relied on to generate a list of client names. Otherwise, this would have required the Department's further manual searches through a broader set of client files, to then collate any payment-related documents stored in them and, finally, zone in on any responsive information.
50. As set out above, the PATI Act does not require a public authority to create a record where it did not already exist. Nor is it for the Information Commissioner to decide whether a record should have existed as a matter of good public administration.
51. The Information Commissioner observes, however, that the Department could have shared certain details about its extensive search efforts and information sources, to evidence its decision—and may wish to do so for future PATI requests, where relevant.

Conclusion

52. The Information Commissioner is satisfied that the Department was justified in relying on the administrative ground in section 16(1)(a) for items 1, 3, 5, 6 and 7 in the PATI request, as evidenced in its search documentation that the Information Officer maintained as required by regulation 5 of the PATI Regulations.

Disclosure prohibited by other legislation – section 37(1)

53. Section 37(1) of the PATI Act allows a public authority to refuse public access to a record whose disclosure is prohibited by a statutory provision other than the PATI Act.
54. The mandatory nature of a prohibition in a provision may be indicated by the use of the word 'shall' and an accompanying provision setting out penalties for unauthorised disclosures. If the relevant statutory provision only applies when a particular function or

duty of a public authority is engaged, the public authority must identify that function or duty and explain how the record falls within the prohibition.

55. The exemption in section 37(1) is not subject to the public interest test.
56. In sum, to rely on section 37(1), a public authority must consider the following:
 - [1] What is the statutory provision creating the mandatory prohibition on disclosure?
 - [2] Does the record fall within this statutory provision?
 - [3] Does the record fall within any exception or gateway to public disclosure that is contained in the statutory provision?
57. A public authority bears the burden of showing that, on the balance of probabilities, it has provided sufficient support to justify applying the exemption.⁶
58. The Information Commissioner now considers whether the Department was justified to rely on section 37 in denying access to the withheld records that were located as responsive to items 2, 4, 6 and 7 in the PATI request.

Public authority's submissions

59. The Department submitted that disclosing records about its overseas client placements was prohibited by the Children Act. The relevant duties of the Director (and their delegated officer) being performed were to investigate abuse and neglect allegations about a child and to arrange for the delivery of services for that child and their placement, including at overseas treatment facilities (section 9).
60. The Department explained that placement and treatment overseas for any child in the Director's care (section 25) happened under an order of the Court (section 84). Family Court matters were private and limited to parties in the matter (e.g., the children and their parents or legal guardians, their attorneys, their appointed litigation guardians and the Department), with the public excluded (section 17).
61. The Minister or Director's discretion to release information was exercised to grant access to the parent or guardian, or to the child if of legal age (section 11(1)(b)). Discretion not to release information might be exercised if it was professionally determined that the information would harm the child or recipient's health.

⁶ See the Information Commissioner's updated [Guidance: Disclosure prohibited by other legislation \(section 37\)](#) (January 2023).

62. The Department further submitted that the prohibition on disclosure in the Children Act aimed to protect the confidentiality and privacy of personal information related to very sensitive and serious family matters. The Department's client records contained personal information of both parents and children. Such personal information, including a client's referral to an overseas facility, would never be released to the public. The Department explained that, if it had released certain information to the public, there would have been a high probability to identify when and why a particular client was there, due to the limited number of children the Department has placed overseas.

Applicant's submissions

63. The Applicant was concerned that section 37 of the PATI Act prevented the Department from being transparent and accountable for matters of significant public interest. They urged for the issue to be rectified, emphasising the importance of the Department's role in servicing the least powerful members in society. They noted that, since the Department had shared some information in response to their PATI requests, it was not clear to them why some, but not other, information could be shared.
64. Specifically, the Applicant believed the Department's decision had not helped to promote and clarify public understanding about its relationship with Glen Mills, a facility that was found to have failed in protecting children and which, at the time of the PATI request, was already closed.⁷ The Applicant believed it was a matter of utmost public interest for the Department to reveal whether client complaints about their experience and treatment at Glen Mills were known by the Department, and if so to what extent and by when.
65. While the Applicant accepted that issues of child abuse and information on clients being sent abroad were sensitive matters, they believed the Department's records about what might have happened during overseas placements at Glen Mills, i.e., details of complaints and incidents, did not need to be withheld under the PATI Act to rightly protect clients' identities and safeguard sensitive, personal and confidential information. The Applicant reiterated that they did not seek personal or confidential information about individual children.

Discussion

[1] What is the statutory provision creating the mandatory prohibition on disclosure?

⁷ The Applicant referred the ICO to a 2020 performance audit report on Glen Mills, which was publicly available on the Pennsylvania Department of the Auditor General's [website](#).

66. The Department identified a relevant statutory prohibition on disclosure set out in section 11 of the Children Act. When read together with the Director’s duties in section 9 as they relate to overseas placements under section 84 and the privacy of court matters under section 17, section 11 creates a mandatory prohibition on the disclosure of overseas placement records. Contravening this duty to not communicate in section 11 would be an offence, liable to a monetary fine on summary conviction under section 11(2) of the Children Act.
67. Further, section 11 was in effect before the PATI Act came into operation. This means that section 37 preserved its statutory prohibition on the disclosure of information even though the Children Act does not specifically reference the PATI Act.⁸

[2] Does the record fall within this statutory provision?

68. The records fell squarely within the broad scope of the statutory prohibition in section 11 of the Children Act because they were obtained during the Department’s performance of its duty to have a child under its care enrolled and serviced at a treatment facility.
69. Based on a plain reading of section 11, all information within the records—i.e., not only the children’s identifying information—comes within the meaning of “information obtained in the performance of [the Director’s] duties under this Act”, and specifically the duties under sections 25 and 84 of the Children Act. The records in whole fell within the statutory prohibition on the disclosure of information contained in section 11.

[3] Does the record fall within any exception or gateway to public disclosure that is contained in the statutory provision?

70. Section 11 does not have any provisions creating a gateway to public disclosure related to the Director’s statutory duties. Section 11(1) sets out two exceptions to the prohibition on children’s officers and persons employed in administering the Children Act: when giving evidence before the courts, and when authorised by the Director or Minister. The Department reasonably understood the Director’s discretionary power granted by section 11(1)(b) as allowing the Director to consider releasing information to the parent or legal guardian, or a child of legal age, but not to the public, in the context of a PATI request. This exception is defined and restricted by the Director’s duties, which in turn are defined by the Children Act.

⁸ If a statutory provision prohibiting disclosure is made after the PATI Act came into operation on 1 April 2015, section 37(5) states that it “shall not have effect unless it provided specifically that it is to have effect notwithstanding” the PATI Act.

71. By the plain language of the Children Act, the Director (or their delegate) should not disclose information outside of the specific circumstances for performing their duties as defined in the Children Act, which upholds secrecy to protect children and their families.

Conclusion

72. The Information Commissioner is satisfied that the Department was justified to rely on section 37(1) in denying public access to all overseas placement records, as responsive to items 2, 4, 6 and 7 in the PATI request, because section 11 of the Children Act was a statutory prohibition on disclosure of the requested information.

Conclusion

73. In sum, the Information Commissioner is satisfied that the Department was justified to rely on sections 16(1)(a) and 37(1) of the PATI Act to administratively deny parts of the PATI request and to otherwise refuse access to the requested records.

Decision

The Information Commissioner finds that the Department of Child and Family Services (**Department**) was justified in relying on sections 16(1)(a) and 37(1) of the Public Access to Information (**PATI**) Act 2010 to administratively deny parts of the request and otherwise to refuse access to the requested records. In accordance with section 48 of the PATI Act, the Information Commissioner affirms the internal review decision by the Department.

Judicial Review

The Applicant, the Department of Child and Family Services, 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
13 December 2023

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Refusal of request on administrative grounds

- 16 (1) A public authority may refuse to grant a request if—
- (a) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;
 - ...

Disclosure prohibited by other legislation

- 37 (1) Subject to subsection (6), a record is exempt if its disclosure is prohibited by any statutory provision, other than this Act.
- ...

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.

Children Act 1998

Disclosure of information

- 11 (1) No children's officer or person employed in the administration of [the Children Act] shall communicate or allow to be communicated information obtained in the performance of his duties under this Act except where—
- (a) giving evidence in any court; or
 - (b) authorized by the Director or the Minister.
- (2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2000.

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