

Decision Notice

**Decision 06/2024: Ministry of Youth, Social Development and Seniors
Headquarters**

Litigation guardian panel records

Reference no: 20211014-01

Decision date: 29 February 2024

Summary

The Ministry of Youth, Social Development and Seniors Headquarters (**Ministry Headquarters**) received a transferred request under the Public Access to Information (**PATI**) Act 2010, asking for records about the litigation guardian panel as announced in 2020. Besides a record disclosed at internal review with some personal information removed, the PATI request was administratively denied under section 16(1)(a) of the PATI Act, on the basis that no other records existed or could be located in circumstances following a ministerial portfolio change.

The Information Commissioner has found that the Ministry Headquarters' administrative denial was justified, because, during this review, it had taken all reasonable steps in the circumstances to locate records before concluding that no others existed or could be located. Further, the Information Commissioner has found that some, but not all, withheld parts in the disclosed record had been appropriately removed as exempt personal information.

The Information Commissioner has required the Ministry Headquarters to re-disclose records.

Relevant statutory provisions

Public Access to Information Act 2010: section 16(1)(a) (record does not exist or cannot be found); section 21 (public interest test); section 23 (personal information); section 24 (definition of personal information).

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

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

Background

1. On 8 January 2020, the Minister of Legal Affairs [announced](#) a new panel of litigation guardians established under the Children Act 1998, whose role was to protect a child's interests once appointed by the Court. The Ministry of Legal Affairs Headquarters would oversee the panel's administrative functions, such as their salary and professional

development—until [ministerial responsibility](#) was moved to the Ministry of Social Development and Seniors Headquarters (**Ministry Headquarters**) on 9 November 2020.¹

2. On 26 November 2020, the Applicant made a Public Access to Information (**PATI**) request to the Ministry of Legal Affairs Headquarters, asking for the following records:
 - a. item 1: any and all correspondence between the Ministry of Legal Affairs’ personnel and the members of the litigation guardian panel about the terms of their appointment, contract, payment, reimbursement and expenses (**set-up correspondence**);
 - b. item 2: the contracts for the litigation guardian panel members (**contracts**);
 - c. items 3 and 4: the dates of training conducted for the litigation guardian panel members and what the training involved (**training information**);
 - d. item 5: details of payments made to two panel members who were believed to also be serving public officers (**public officer payments**); and
 - e. item 6: any communications concerning how serving public officers could manage their work for the panel alongside their full-time roles (**work balance communication**).
3. The Ministry of Legal Affairs Headquarters responded by transferring the PATI request because it was no longer responsible for litigation guardian matters—while missing the deadline to have made a timely transfer.² On 16 December 2020, the receiving public authority, the Ministry Headquarters, acknowledged the transferred PATI request, with an update to the Applicant that they awaited the prior ministry’s files. The PATI request was assigned reference no. 640 by the Ministry Headquarters.
4. Statutory deadlines to issue a timely initial decision and to ask for an internal review each passed, with no follow-up between the parties until May 2021. On 4 June 2021, the

¹ During this Information Commissioner’s review, the Ministry of Social Development and Seniors Headquarters became the Ministry of Youth, Social Development and Seniors Headquarters due to a ministerial portfolio change with effect on [10 November 2023](#). It retained the ministerial portfolio for the litigation guardian panel’s administration, as well as the Department of Child and Family Services. For purposes of handling the PATI request in this review, any reference in this Decision Notice to the **Ministry Headquarters** means both the current Ministry of Youth, Social Development and Seniors Headquarters as well as the then-Ministry of Social Development and Seniors Headquarters.

² Section 13(5) of the PATI Act requires a public authority to transfer a PATI request within five working days of receiving it, when the record as requested is not held by that authority but, to the knowledge of that authority, is held by another public authority.

Ministry Headquarters updated the Applicant that it had finally received the prior ministry's files and would search them for responsive records. Weeks later, a decision on the PATI request remained outstanding, the Applicant asked for an internal review, and the Ministry Headquarters accepted it on 5 July 2021.³

5. Having reviewed the prior ministry's files, the Ministry Headquarters issued a response to the Applicant's PATI request on 7 July 2021. The ICO later accepted that this response had been a valid internal review decision that was capable of independent review under section 45 of the PATI Act.
6. In its internal review decision, the Ministry Headquarters released a litigation guardian contract (for item 2), stating personal information was redacted; asked the Applicant to identify who they believed those public officers were (for items 5 and 6); and stated that no other responsive records were found amongst the prior ministry's files. The Head of Authority noted that they had asked for the Ministry of Legal Affairs Headquarters to confirm whether it retained any other responsive records, which could be forwarded to the Ministry Headquarters for processing. The decision also acknowledged that initially transferring the PATI request was the appropriate step due to the ministerial portfolio change.
7. The Applicant replied on 25 August 2021, noting they were unsure where matters stood with the Ministry Headquarters' further search for their PATI request—but also understood the Head of Authority had recently changed due to permanent secretary reassignments. The Applicant attempted to make a fresh request for an internal review by the newly assigned Permanent Secretary on 1 September 2021, following the response issued on 7 July 2021. While the Applicant believed this would have appropriately reset the Ministry Headquarters' deadline to issue a complete, substantive

³ In this case, both parties enquired separately with the ICO to clarify the appropriate next step. Where a requester has not yet made a valid internal review request, the Information Commissioner has no authority to conduct an independent review under section 45. When a late request for an internal review is made, a public authority may exercise its discretion to accept it. This may be appropriate where the public authority had yet to make any substantive decision on the PATI request. The date when the public authority accepts the late request for internal review triggers its 6-week timeline to issue a timely internal review decision, i.e. not when the authority receives the late internal review request; see [Decision 38/2023, Department of Child and Family Services](#), at paragraph 4.

Another challenge was that the Ministry Headquarters' information officer was also the head of authority. Both parties presumed the same person could not review their own decision. The ICO clarified for the parties that, for an initial decision made by the person is also the head of authority, any request for an internal review must be referred to the Information Commissioner under section 44 of the PATI Act. Further, once the requester asks for an internal review, the decision-making authority on the PATI request lies with the head of authority alone, even where no initial decision had been made by then; see [Decision 19/2022, Department of Communications](#), at paragraphs 19-21.

response on their PATI request, the ICO later clarified for both parties why this did not fit within the PATI framework.

8. On 14 October 2021, the Applicant made a valid application for an independent review by the Information Commissioner as explained below—and despite unfortunate procedural missteps along the way.

Investigation

9. The Information Commissioner exercised her discretion under section 45(2) of the PATI Act to accept the late application for an independent review as valid. She was satisfied that the public authority's response of 7 July 2021 did not clearly identify for the Applicant that it was an internal review decision (despite being one) and did not accurately describe their right of review. The Information Commissioner was also satisfied that the Applicant had made a valid, albeit late, request to a public authority for an internal review that was accepted. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
10. On 16 November 2021, the ICO notified the Ministry Headquarters of the issues raised, also inviting its consent to participate in an early resolution under section 46 so the ICO could facilitate the parties' agreement on which public authority held the responsive records if they existed.⁴ Since the Ministry Headquarters did not formally respond to this early resolution offer, the Information Commissioner commenced a review under section 47 of the PATI Act to resolve the application.
11. As required by section 47(4) of the PATI Act, the Ministry Headquarters and the Applicant were given a reasonable opportunity to make representations to the Information Commissioner—and have done so during this review.
12. On 21 September 2023, the ICO invited the Applicant to send any other information they wished to be considered and received their submissions on 26 October 2023. For the public authority, the ICO invited the Ministry Headquarters' submissions on 20 October 2023, including specific questions about its original search and understanding of the PATI request's scope, and received them on 17 November 2023. The ICO Investigation Officer then shared a preliminary view on 30 January 2024, inviting the Ministry Headquarters' additional search explanations, and received those through February 2024. This included

⁴ Section 3(3) of the PATI Act explains that a record is 'held by' a public authority when it is in the possession, custody or under the control of that authority; see [Decision 11/2018, Bermuda Police Service](#), at paragraphs 20-31.

that the Ministry Headquarters was able to locate each litigation guardian contract as responsive to item 2 in the PATI request, from searching the government's accounting system, E-1.

Information Commissioner's analysis and findings

13. 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)

14. 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.
15. 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.
16. 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.
17. 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.
18. The specific circumstances in each case will inform the Information Commissioner's assessment.

19. 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.⁵

Public authority's submissions

20. While the internal review decision did not describe details of the search efforts taken at that time, based on additional searches during the ICO's review, the Ministry Headquarters submitted the following information to the Information Commissioner to justify that, in the circumstances, all reasonable efforts were made to respond to the PATI request.
21. The Ministry Headquarters' additional search consisted of re-visiting its hard-copy files, doing electronic searches in E-1 and on its shared drive, as well as communicating with other officers to try and learn more about how the PATI request had been handled and other background. The Ministry Headquarters shared for the ICO the keywords used for their electronic searches and the approximate time spent on these additional searches.
22. In terms of results, by way of its E-1 search, the Ministry Headquarters was able to locate the 5 contracts (item 2) but found no record of public officer payments (item 5). The Ministry Headquarters submitted that, contrary to the PATI request, there was one serving public officer, not two, on the panel. Likewise, the Ministry Headquarters found no set-up correspondence (item 1) nor records of any work balance communication (item 6) in searching its shared drive and hard-copy files.
23. For training information (items 3 and 4), the Ministry Headquarters' queries with other officers revealed that, by the time of the PATI request, training had been offered for the panel members. But its search of the files held by the Ministry Headquarters did not result in any actual records.

Applicant's submissions

24. The Applicant expressed that they had made a relatively straightforward PATI request now four years ago. Although there were changes in which public authority was responsible, the Applicant believed there must have been a set process for the proper storage and transfer of all publicly held records following such transitions. Without this

⁵ See [Decision 04/2017](#), [Department of Health](#), at paragraphs 37-49, and more recently [Decision 55/2023](#), [Ministry of Education Headquarters](#), at paragraphs 23-28.

process, the Applicant argued that an important matter like this, which involved the way the government handled the welfare of vulnerable children, would become opaque.

25. On this basis, the Applicant expected that there must have been correspondence to recruit and appoint litigation guardians (item 1) and that those selected must have had some formal training (item 3), of which some record of the training material must have existed (item 4). The Applicant pointed out that they did not receive a complete response on records of public officer payments (item 5), even if they had not replied to the Head of Authority's query about the individuals' names. They believed that when a public authority places the onus back on a requester to give information already in the authority's possession, the PATI process is stymied. The Applicant expected that there must have been some discussion about how public officers would manage their workload and avoid conflicts of interest (item 6).
26. The Applicant generally questioned whether a proper search for records had been done for their PATI request, based on the response issued by the Ministry Headquarters on 7 July 2021. They could not make sense of a response that records did not exist.

Discussion

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

Items 1-4 and 6

27. The Information Commissioner accepts that the Ministry Headquarters correctly understood the scope of records sought by each item in the PATI request, which were stated in clear and specific terms. By a plain reading of the request, the Applicant was seeking various records to evidence how the Ministry of Legal Affairs Headquarters had selected, trained, paid and generally managed the initial set-up for the litigation guardian panel.

Item 5

28. For item 5 about public officer payments, the Information Commissioner acknowledges the parties' different views. The Applicant believed two panel members were serving public officers, while the Ministry Headquarters identified only one. The Information Commissioner accepts the Ministry Headquarters' understanding of item 5. The other panel member worked for a public authority but outside the public service and not as a government employee. Despite the lack of a substantive response in the internal review decision about public officer payments, the Ministry Headquarters has shown to the Information Commissioner during this review that it had appropriately identified the relevant individual.

29. The quality of the Ministry Headquarters' analysis of the request was adequate.

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

30. The Information Commissioner is satisfied that the Ministry Headquarters identified relevant locations to search for responsive records during this review, addressing any potential gaps in its original search. This included E-1, specifically for contracts and payments, and its shared drive and hard-copy files for the rest of the PATI request. Based on the Ministry Headquarters' submissions, the keywords used by the Ministry Headquarters for its electronic search during this review were relevant to the scope of records sought by the PATI request.

31. The Information Commissioner notes the absence of an email search here, which a public authority would ordinarily do to show that it has made every reasonable effort to process a PATI request. At first glance, it would appear an email search might have been reasonable during the processing of the request, at least to verify whether any set-up correspondence and work balance communication (items 1 and 6) existed. Under the circumstances here, though, it was not reasonable to expect the Ministry Headquarters to conduct a search of officers' emails who worked in another public authority, i.e. the Ministry of Legal Affairs Headquarters. These were records that were not handed over to the Ministry Headquarters when ministerial responsibility for litigation guardians was transferred.

32. The Applicant was correct to raise the importance of good public record management where ministerial portfolio or other organisational changes have taken place. However, as noted in [Decision 11/2022, Ministry of National Security Headquarters](#), the email records of public officers formerly working in a ministry headquarters, such as a permanent secretary who had retired or been re-assigned, are reasonably viewed as institutional records managed by the original public authority (paragraph 54). That was not what happened here. As stated at paragraph 16, it is not the Information Commissioner's role when reviewing a public authority's reliance on section 16(1)(a) to determine if that authority should have held a record as a matter of good public administration.

33. Though the Ministry Headquarters did not retain any document to show the ICO the extent of its original search efforts, the Information Commissioner is satisfied that the scope of the Ministry Headquarters' additional search during this review was adequate.

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

34. Although no documentation was made of the rigour and efficiency of the search during its handling of the request, the Ministry Headquarters provided submissions on its search during this review. The Information Commissioner finds no basis, in the circumstances, to dispute the Ministry Headquarters' submission in relation to the rigour of the search carried out during this review to justify its reliance on the administrative denial. On the balance of probabilities, the Information Commissioner is satisfied that the Ministry Headquarters identified knowledgeable persons to conduct further searches, obtained the assistance of its Controller to efficiently retrieve records from E-1, and otherwise did not encounter any resistance or challenges to efficiently searching during this review. In the context of a ministerial portfolio change and where certain potential record locations were never under its control, the Ministry Headquarters also identified and searched all appropriate locations.

Conclusion

35. The Information Commissioner is satisfied that the Ministry Headquarters was justified in relying on section 16(1)(a) of the PATI Act to have refused items 1, 3, 4, 5 and 6 in the PATI Act.
36. The Information Commissioner moves on to consider the Ministry Headquarters' reliance on the personal information exemption for the redacted parts of the contracts responsive to item 2 in the PATI request.

Personal information – section 23(1)

37. Section 23(1) allows a public authority to deny public access to a record or part of a record if it consists of personal information. Section 24(1) defines personal information as information about an identifiable individual, subject to exclusions to this definition in section 24(2) which, as discussed below, are not relevant in this review.
38. If the information in the record includes reference to a specific person, it is personal information. A record will also contain personal information if the individual's identity is reasonably ascertainable from the information.
39. Certain information about identifiable individuals is excluded from the definition of 'personal information' in the PATI Act, in accordance with section 24(2). For example, certain information about contractors performing services for a public authority, or information relating to any discretionary benefit of a financial nature conferred on an individual by a public authority.

40. The personal information exemption does not apply in certain circumstances set out in section 23(2). The exemption does not apply, for example, if the information relates to the requester or if the individual to whom the information relates has given their written consent for disclosure.
41. The personal information exemption is subject to the public interest test in section 23(6). In the context of personal information, the public interest test requires a balancing of the public interests in favour of publicly knowing an individual's personal information, on the one hand, against the privacy rights of the individual and any other public interest in favour of confidentiality, on the other.
42. When considering the public interest test for a personal information disclosure, public authorities should take into account the following factors:⁶
 - a. whether disclosure will further the public interest, including but not limited to the factors listed in regulation 2 of the PATI Regulations;
 - b. whether disclosure would be fair to the individual under all of the circumstances, which would include consideration of whether sensitive personal information⁷ was involved, the potential consequences of disclosure on the individual, and the individual's reasonable expectations of privacy; and
 - c. whether disclosure of the personal information is necessary to further the public interests that have been identified.
43. The Information Commissioner will consider whether the public interest concerns, if any, can be met by disclosure of other information in the records that interferes less with an individual's right to privacy. If so, the public interest concerns in favour of disclosure may be given less weight in the balance than the individual's privacy rights and freedoms.
44. In sum, to appropriately rely on the personal information exemption in section 23(1), the public authority must consider:⁸

[1] Whether the records consist of information about an identifiable individual?

⁶ See [Decision 02/2019, Office of the Governor](#), at paragraph 51.

⁷ Under section 7(1) of the Personal Information Protection Act 2016, 'sensitive personal information' means "any personal information relating to an individual's place of origin, race, colour, national or ethnic origin, sex, sexual orientation, sexual life, marital status, physical or mental disability, physical or mental health, family status, religious beliefs, political opinions, trade union membership, biometric information or genetic information".

⁸ See [Decision 02/2019, Office of the Governor](#), at paragraph 56.

[2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?

[3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

[4] If the exemption for personal information in section 23(1) is engaged, whether the balance of the public interest requires disclosure?⁹

45. A public authority invoking section 23(1) has the burden to show that, on the balance of probabilities, the exemption is justified. This is also the only exemption the Information Commissioner will invoke on her own accord to safeguard the right to privacy.

Public authority's submissions

46. The Ministry Headquarters submitted that each contract signed by the 5 litigation guardian panel members contained personal information such as their name, private contact details and signatures. This personal information had been removed from the sample record disclosed at internal review, because the Ministry Headquarters found it unnecessary to disclose this type of personal information as defined in section 24(1)(e) of the PATI Act. Later during this review, the Ministry Headquarters searched again and was able to locate each signed contract in the government's accounting system, E-1. On this basis, the Ministry Headquarters confirmed for the Information Commissioner that each of the 5 contracts responsive to item 2 in the PATI request contained the same type of personal information. The Ministry Headquarters maintained their position that the public interest did not require any further disclosure of the members' personal information in the contracts. The Ministry Headquarters reiterated that the disclosed contract, with an effective date of 16 December 2019, was the same standard agreement used for all members of the litigation guardian panel, during the time the PATI request was made.

Applicant's submissions

47. The Applicant queried the reason for the information being redacted from the copy of the contract they had received at internal review. They pointed to the fact that the Attorney General had publicly named the litigation guardian panel members and referred to a media article about the newly formed panel.

⁹ Disclosure of records consisting of personal information should also be made if disclosure would benefit the individual, in accordance with section 23(6) of the PATI Act, which is irrelevant in this case.

Discussion

48. The Information Commissioner now considers section 23(1) for the redacted parts of the contract responsive to item 2 in the PATI request. Based on the contract itself, appendix 1 was described as containing the litigation guardian panel member's name, their contact details, and information on the gross fee that would be paid for services delivered.

[1] Whether the records consist of information about an identifiable individual?

49. Having carefully reviewed the redacted contract and the Ministry Headquarters' search evidence, the Information Commissioner is satisfied that some withheld material in the contract consisted of information about identifiable individuals. This included the litigation guardian panel member's name and private contact details, such as their home address, private phone and email, as well as their signature.
50. In contrast, any fee information in appendix 1 that was general to all litigation guardian panel members would not have consisted of information about any identifiable individual, similar to how the terms of an individual's contract would not meet this definition. The Information Commissioner finds that the personal information exemption did not apply to any fee information in appendix 1. Even if it did, this information could be described as the contract value and thus would fall within the exclusion to the personal information exemption in section 24(2)(b), as described below. Section 23(1) is not considered further for the fee information in appendix 1.
51. Section 23(1) is considered further for the litigation guardian panel members' names and contact details.

[2] Whether the information falls within any of the exclusions to the definition of personal information (section 24(2))?

52. The Information Commissioner finds that section 24(2)(b) applied to the names of the litigation guardian members in appendix 1. Such information was excluded from the definition of exempt personal information, as described above at paragraph 39. Even still, this information was already in the public domain as announced by the Minister of Legal Affairs in January 2020. Section 23(1) is not considered further for this information.

[3] Whether any of the exceptions to the exemption in section 23(2) apply to the records?

53. The Information Commissioner is satisfied that no exception in section 23(2) applied to the remaining withheld material at issue, i.e. the litigation guardian members' contact details and signatures alone. This information did not relate to the Applicant, and no express consent to disclosure was given by a concerned individual.

[4] Whether the balance of the public interest requires disclosure?

54. With the names of the litigation guardians having already been published, and other details about their work made known, there was no identifiable public interest that would have been furthered by disclosure of their contact details and signature.
55. In the absence of any public interest that would have been furthered by disclosure, the balance of the public interest favoured maintaining the confidentiality of the litigation guardian's contact details and signature.

Conclusion

56. The Information Commissioner is satisfied that the Ministry Headquarters was justified in relying on section 23(1) to withhold the litigation guardian panel member's contact details and signature as exempt personal information but was not justified in denying access to their name and any fee information, in appendix 1 of the contract.

Conclusions

57. Based on the evidence available, the Information Commissioner is satisfied that, while the Ministry Headquarters was not justified in relying on the administrative ground in section 16(1)(a) of the PATI Act to have refused items 1, 3, 4, 5 and 6 in the PATI request when it initially processed the request, during the course of this review it has taken all reasonable steps to locate responsive records before affirming they did not exist or could not be found.
58. The Information Commissioner is satisfied that section 23(1) applied to part of the withheld personal information in the contract, but not to other parts of appendix 1 in each contract, as responsive to item 2 in the PATI request.
59. The Information Commissioner also acknowledges the regrettable delays in this review that arose from circumstances both internal and external to her office. In circumstances seen during this review, the public's access to some responsive records related to the administration of the original 5-member litigation guardian panel, if they ever existed, may have been compromised due to the passage of time, several public authority reassignments, and the recent cyberattack on the government network. For this, she apologises to the Ministry Headquarters, the Applicant and the public.

60. Finally, the Information Commissioner observes that this PATI request, in full, was transferred at a time when the original public authority, more likely than not, continued to possess and exercise control over responsive records on the topic. Based on communications shared between the parties, this situation created an unnecessary delay for the requester to receive a complete and substantive decision on whether access to public records was granted or not. The receiving public authority's capacity and good intention to process the PATI request, completely and in a timely manner, was thwarted without good reason.
61. As this Decision illustrates, the need for the responsible minister to deliver a records management code of practice, as section 60(2) of the PATI Act requires, remains urgent. The Information Commissioner awaits the opportunity to consult on it. In its absence, the Information Commissioner urges for guidance to be circulated—and its adherence proactively monitored—to clearly set out the government's expectation on what a proper handover of public records for departments and ministry headquarters involves, where the situation arises due to Cabinet shuffles, post reassignments and other organisational changes.

Decision

The Information Commissioner finds that the Ministry of Youth, Social Development and Seniors Headquarters (**Ministry Headquarters**) was justified in relying on section 16(1)(a) of the Public Access to Information (**PATI**) Act 2010 to administratively deny the request, as well as on section 23(1) to withhold some, but not all, personal information in the disclosed record.

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

- affirms the part of the internal review decision administratively denying items 1, 3, 4, 5 and 6 in the PATI request under section 16(1)(a);
- affirms and annuls, in part, the internal review decision for the redacted litigation guardian contract, as responsive to item 2 in the PATI request, under section 23(1); and,
- orders the Ministry Headquarters to disclose all 5 litigation guardian contracts, with the names of litigation guardians and fee information in appendix 1 left unredacted, as aligned with the proper application of the personal information exemption.

The Information Commissioner requires the Ministry Headquarters' compliance, as directed by this Decision and the accompanying Order, on or before **Thursday, 11 April 2024**.

Judicial Review

The Applicant, the Ministry of Youth, Social Development and Seniors 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.

Enforcement

This Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the Ministry of Youth, Social Development and Seniors Headquarters 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
29 February 2024

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;
 - ...

Public interest test

- 21 For the purposes of this Part, the test of whether disclosure by a public authority of a record or the existence of a record is in the public interest is whether the public interest would, on balance, be better served by disclosure than by non-disclosure.

Personal information

- 23 (1) Subject to the provisions of this section, a record that consists of personal information is exempt from disclosure.
- ...
- (6) A record that contains personal information relating to an individual shall be disclosed if disclosure of it is in the public interest or would benefit the individual.

Definition of personal information

- 24 (1) Subject to subsection (2), “personal information” means information recorded in any form about an identifiable individual, including—
- ...
 - (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
 - ...
- (2) But “personal information” does not include—
- ...
 - (b) information about an individual who is or was performing services under contract for a public authority that relates to the services performed, including the terms of the contract and the name of the individual;
 - ...

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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