

Decision Notice

Decision 29/2024: Ministry of Justice Headquarters

Records related to a former Legal Aid Counsel: failure to decide within statutory timeframe

Reference no: 2024068

Decision date: 23 September 2024

Summary

On 9 May 2024, the Applicant asked the then-Ministry of Legal Affairs Headquarters (recently changed to the Ministry of Justice) (**Ministry Headquarters**) for records related to a former Legal Aid Counsel. The Information Commissioner has found that the Ministry Headquarters 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 Ministry Headquarters to comply with the requirement to issue a decision on the Applicant’s request for an internal review on or before **Monday, 21 October 2024**.

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 8 August 2024. 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
9 May 2024	The Applicant made a written PATI request to the Legal Aid Office within the now-Ministry of Justice Headquarters (Ministry Headquarters).
20 June 2024	The statutory deadline passed for the Ministry Headquarters to issue an initial decision, i.e., within six weeks of the PATI request date.
23 June 2024	The Applicant made a timely request for the Head of Authority to conduct an internal review.
5 August 2024	The statutory deadline passed for the Ministry Headquarters to issue an internal review decision, i.e., within six weeks of its receipt of the Applicant’s request for one—and on the next working day after the deadline, since it fell on an excluded day.

8 August 2024	The Applicant requested an independent review by the Information Commissioner.
28 August 2024	The ICO notified the Ministry Headquarters of this application for review and invited its comments.
11 September 2024	The Head of Authority requested an extension of time to make submissions to the ICO.

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 23 June 2024, the Applicant requested an internal review by the Ministry Headquarters’ Head of Authority, who for purposes under the PATI Act is the Permanent Secretary. The Applicant did not receive an internal review decision by 5 August 2024.
5. On 8 August 2024, the Applicant requested an independent review by the Information Commissioner of the Ministry Headquarters’ alleged failure to issue an internal review decision.
6. By letter dated 28 August 2024, the ICO invited the Ministry Headquarters to make submissions on this review, as the Information Commissioner is required to do under section 47(4) of the PATI Act. The Head of Authority informed the ICO that they had been on leave and the relevant PATI Information Officers had not received the ICO’s notice on 28 August 2024. The ICO has confirmed that the notice letter failed to deliver to the Legal Aid Office’s Information Officer as expected, while its receipt was acknowledged by the then-Acting Permanent Secretary on 28 August 2024.
7. The Head of Authority also explained to the ICO that, as permanent secretary, they relied on the PATI Information Officers to bring matters to their attention; and in this instance, the Legal Aid Office’s Information Officer had not been copied in some earlier emails. The Head of Authority asked for more time to make their submissions to the ICO.

8. Given the time lapse, however, since the PATI request had been submitted and the internal review request appropriately made, the Information Commissioner does not wish to further delay the Applicant's right to receive the Ministry Headquarters' internal review decision. The Ministry Headquarters has been notified of this.
9. It is a matter of fact that the Ministry Headquarters did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Ministry Headquarters failed to comply with section 43(2) of the PATI Act and now orders the Ministry Headquarters to issue an internal review decision. The Ministry Headquarters may also wish to consider apologising to the Applicant.
10. Finally, requesters are encouraged to copy in the public authority's Information Officer in all correspondence with the public authority about their PATI request, due to the Information Officer's integral role throughout the PATI process. Doing so can assist the public authority to meet their PATI deadlines.

Decision

The Information Commissioner finds that the Ministry of Justice Headquarters (**Ministry Headquarters**) 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 Act 2010. As set forth in the accompanying Order, the Information Commissioner orders the Ministry Headquarters 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 **Monday, 21 October 2024**.

Judicial Review

The Applicant, the Ministry of Justice Headquarters or any other person aggrieved by this Decision have the right to apply to the Supreme Court for review of this Decision, 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, according to section 48(3) of the PATI Act. If the Ministry of Justice 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
23 September 2024

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