

Decision Notice

Decision 13/2021: Department of Public Prosecutions

Sexual offence records: failure to decide within statutory timeframe

Reference no: 20211019-02

Decision date: 10 November 2021

Summary

On 24 June 2021, the Applicant asked the Department of Public Prosecutions (**DPP**) for a copy of records relating to sexual offence cases. The Information Commissioner has found that the DPP 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.

Background

1. This Information Commissioner's Decision is made in the context of a 'failure to decide' case involving an application for review under Part 6 of the Public Access to Information (**PATI**) Act 2010 that was received by the Information Commissioner's Office (**ICO**) on 19 October 2021.
2. This Decision does not address whether a public authority has properly denied access to a record. Rather, it addresses the basic obligation upon a public authority to respond to a requester within the statutory timeframe.
3. Relevant dates include the following:

Date	Action
24 June 2021	The Applicant made a written PATI request to the DPP.
	The Applicant did not receive an initial decision within six weeks of the DPP's receipt of the PATI request, i.e., by 5 August 2021.
1 September 2021	The Applicant requested an internal review be conducted by the head of the public authority.
	The Applicant did not receive an internal review decision within six weeks of the DPP's receipt of the request for one, i.e. by 5 November 2021.
19 October 2021	The Applicant requested an independent review by the Information Commissioner.

21 October 2021	The ICO notified the DPP in writing that an application had been received from the Applicant. The DPP was asked to comment on the application.
30 October 2021	The DPP issued an internal review decision to the Applicant.
9 November 2021	The DPP provided submissions to the Information Commissioner for consideration in this review.

Information Commissioner’s analysis and findings

Internal Review Decision

4. 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 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.
5. On 24 June 2021, the Applicant sent the DPP an email requesting an internal review. The Applicant did not receive an internal review decision by 5 August 2021.
6. On 19 October 2021, the Applicant requested an independent review by the Information Commissioner of the DPP’s alleged failure to issue an internal review decision.
7. By a letter dated 21 October 2021, the DPP was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act. In its formal submissions made on 9 November 2021, the DPP accepted that it had not issued an internal review decision within the statutory timeframe. The DPP explained that the delay was due to various factors, including staff shortages, its current workload and the extent of the PATI request.
8. The DPP also submitted that the PATI request did not contain sufficient information to enable it to identify the requested information. Although the DPP asked the requester for clarification, the attempt ultimately expanded the scope of the original request, which consequently increased the scope of information required to respond.
9. The DPP further explained that, given its statutory obligation to keep confidential any information identifying a person accused of sexual offences or a complainant in a sexual

offence case, the collection and presentation of the records sought in the PATI Act substantially and unreasonably interfered with the DPP's day to day operations. The DPP explained that, while some requested records did not exist, it tried to ascertain if they could be found by other means.

10. The Information Commissioner commends the DPP for making efforts to provide the Applicant with information responsive to the PATI request to the greatest extent possible during the course of this review.
11. Public authorities are reminded that an internal review decision should be issued within the six-week timeframe. Timeframes in the PATI Act support the public's right to access non-exempt records. For a PATI requester, a timely internal review decision, issued according to section 43(2), provides certainty and triggers their right to an independent review by the Information Commissioner.
12. The Information Commissioner notes the DPP's submissions raising concerns about clarifying the PATI request and the burden of processing it. While these concerns may inform the DPP's substantive internal review decision to grant or refuse access to the requested records, the concerns do not change the statutory deadlines under the PATI Act for the issuance of the internal review decision.
13. It is a matter of fact that the DPP did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the DPP failed to comply with section 43(2) of the PATI Act.
14. During the course of this review, the DPP provided the Applicant with an internal review decision dated 30 October 2021. The DPP's Head of Authority also acknowledged to the Applicant its failure to comply with the statutory timeframe.
15. The Information Commissioner does not require the DPP to take any further action at this time in relation to the Applicant's request for an internal review. The Information Commissioner expresses appreciation to the DPP for its cooperation and efforts to bring itself into compliance with the PATI Act.

Decision

The Information Commissioner finds that the Department of Public Prosecutions (**DPP**) 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. During the course of this review, the DPP issued an internal review decision. Consequently, the Information Commissioner does not require the DPP to take any further action in respect of this Decision.

Judicial Review

Should the Applicant, the DPP, or any aggrieved party wish to seek judicial review according to section 49 of the PATI Act against this Decision, they have the right to apply to the Supreme Court for review of this Decision. Any such appeal must be made within six months of this Decision.



Gitanjali S. Gutierrez
Information Commissioner
10 November 2021

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