

## Decision Notice

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**Decision 07/2021: Department of Environment and Natural Resources**

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**Historic wrecks records: failure to decide within statutory timeframe**

**Reference no: 20210716**

**Decision date: 23 August 2021**

## Summary

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On 10 February 2021, the Applicant asked the Department of Environment and Natural Resources (**Department**) for various records relating to historic wrecks. This Decision finds that the Department failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information Act (**PATI**) 2010.

## Background

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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 PATI Act that was received by the Information Commissioner's Office (**ICO**) on 16 July 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 timeframes.
3. Relevant dates include the following:

<b>Date</b>	<b>Action</b>
<b>10 February 2021</b>	<b>The Applicant made a PATI request to the Department.</b>
<b>19 March 2021</b>	<b>The Applicant received an initial decision within six weeks of the Department's receipt of the PATI request.</b>
<b>28 April 2021</b>	<b>The Applicant requested an internal review be conducted by the head of the public authority.</b>
	<b>The Applicant did not receive an internal review decision within six weeks of the Department's receipt of the request for one, i.e., by 9 June 2021.</b>
<b>16 July 2021</b>	<b>The Applicant requested an independent review by the Information Commissioner.</b>

<b>6 August 2021</b>	<b>The Department was notified in writing that an application had been received from the Applicant. The Department was asked to comment on the application.</b>
<b>19 August 2021</b>	<b>The Department issued an internal review decision to the Applicant and provided submissions to the Information Commissioner for consideration in this review.</b>

## **Information Commissioner’s analysis and findings**

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### *Internal Review Decision*

1. 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.
2. On 28 April 2021, the Applicant sent the Department an email requesting an internal review. The Applicant received further correspondence from the Department on 14 May 2021 in response to their internal review request, in an effort to be of assistance and comply with the PATI Act’s requirements. The correspondence was not, however, issued by the Department’s Head of Authority. As a result, the Applicant did not receive an internal review decision by 9 June 2021.
3. On 16 July 2021, the Applicant requested an independent review by the Information Commissioner of the Department’s alleged failure to issue an internal review decision.
4. By a letter dated 6 August 2021, the Department was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act. In its submissions made on 19 August 2021, the Department accepted that it had not issued an internal review decision within the statutory timeframe. The Department explained that, because it was not aware that the Permanent Secretary for the Ministry of Home Affairs was its Head of Authority for the purposes of the PATI Act, the Applicant’s internal review request was never brought to the Head of Authority’s attention.
5. The Information Commissioner accepts the Department’s explanation that the Department’s failure to bring the internal review request to the Head of Authority’s

attention as well as its correspondence to the Applicant of 14 May 2021 was done in good faith. The Information Commissioner wishes to use this opportunity, however, to remind public authorities to familiar themselves with the provisions of the PATI Act and to consult the Minister's PATI Practice Code when handling PATI requests.

6. It is a matter of fact that the Department did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Department failed to comply with section 43(2) of the PATI Act.
7. During the course of this review, the Department promptly provided the Applicant with an internal review decision, including its reasons, on 19 August 2021.
8. The Information Commissioner does not require the Department to take any further action at this time in relation to the Applicant's request for an internal review. The Information Commissioner commends the Department for its responsiveness and cooperation while bringing itself into compliance with the PATI Act.

## Decision

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The Information Commissioner finds that the Department of Environment and Natural Resources (**Department**) failed to comply with Part 5 of the Public Access to Information (**PATI**) Act 2010 in responding to a request for an internal review made by the Applicant. In particular, the Department 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 PATI Act.

During the course of this review, the Department issued an internal review decision. Consequently, the Information Commissioner does not require the Department to take any further action in respect of this Decision.

## Judicial Review

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Should the Applicant, the Department, 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  
23 August 2021

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