Decision Notice

Decision 16/2025: Legal Aid Office

Legal aid payments: failure to decide within statutory timeframe

Reference no: **2025022**
Decision date: **15 September 2025**

Summary

On 22 June 2025, the Applicant asked the Legal Aid Office for records of legal aid payments and costs associated with travel, accommodation and per diem allowances approved by the Legal Aid Committee in a criminal appeal case. The Information Commissioner has found that the Legal Aid Office failed to decide the Applicant's request for an internal review within the statutory timeframe set by the Public Access to Information Act 2010.

Background and Investigation

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. It addresses a public authority's basic obligation to conduct an internal review and notify the requester of its decision within the six-week statutory timeframe, not whether a public authority has properly denied access to a record.

2. On 22 June 2025, the Applicant made a written PATI request to the Legal Aid Office for records of legal aid payments approved by the Legal Aid Committee in a criminal appeal.

3. On 23 June 2025, the Legal Aid Office issued an initial decision to the Applicant.

4. On 5 July 2025, the Applicant made a timely request for the Head of Authority of the Legal Aid Office, the Permanent Secretary for the Ministry of Justice, to conduct an internal review of the Legal Aid Office's initial decision.

5. The Applicant did not receive an internal review decision from the Legal Aid Office by the six-week deadline of 18 August 2025.

6. On 20 August 2025, the Applicant requested that the Information Commissioner conduct a review of the Legal Aid Office's failure to decide within the six-week statutory time limit.

7. The application for the Information Commissioner's Review was assessed as valid as it met the criteria of section 45(1) of the PATI Act.

8. The Information Commissioner decided not to attempt to resolve the matter under section 46 of the PATI Act because failure to decide by a public authority, by its nature, can be terminal to the rights of a requester and should be reviewed under section 47 of the PATI Act.

9. A review was commenced under section 47 of the PATI Act.

10. As required by section 47(4) of the PATI Act, on 21 August 2025, the ICO notified the Legal Aid Office of the valid application and invited the Legal Aid Office to make submissions addressing whether the Legal Aid Office had, in fact, conducted an internal review and issued an internal review decision on or before 4 September 2025. At the same time, the ICO strongly encouraged the Head of Authority to conduct an internal review and issue an internal review decision ahead of that deadline, if they had not already done so.

11. By the close of 4 September 2025, the Head of Authority had not confirmed with the ICO that an internal review decision was issued and provided to the Applicant.

12. On 11 September 2025, the Legal Aid Office made submissions. The Legal Aid Office explained that the Head of Authority had recently been confirmed in the post, and the Information Officer had been on extended leave and unable to assist the Head of Authority within the relevant deadline.

13. On 11 September 2025, the Head of Authority for the Legal Aid Office, the Permanent Secretary for the Ministry of Justice, issued an internal review decision and provided the ICO with a copy evidencing that the Applicant had received a copy.

Analysis and findings

Internal Review Decision

14. Section 43 of the PATI Act requires the head of a public authority to conduct an internal review of any decision made by the authority with respect to a PATI request or of any failure by the authority to take any action that it is required to take under the PATI Act.[1] The head of authority must 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. This must be completed by the head of a public authority within six weeks of receiving a request for an internal review.

15. It is a matter of fact that the Legal Aid Office did not provide the Applicant with an internal review decision within six weeks of receiving the Applicant's request for one, which was due on 18 August 2025.

[1] Section 42 of the PATI Act sets out the scope of an internal review.

16. The Information Commissioner finds that the Legal Aid Office failed to comply with section 43(2) of the PATI Act.

17. The Information Commissioner accepts that the Legal Aid Office had issued an internal review decision ahead of this Decision. However, there is real concern that the Legal Aid Office had not complied with this statutory obligation even after notice that the ICO had opened an external review into its failure to issue an internal review, with strong encouragement from the ICO to conduct such a review before the ICO's review deadline.

18. Delays of this kind by public authorities impede a requester's right to apply for an external review by the Information Commissioner on the substantive reasons why access to records was refused by a public authority. It is also important that public authorities remain accountable for complying with statutory deadlines in the PATI Act.

19. Given that the Legal Aid Office has issued an internal review decision before this Decision was issued, the Information Commissioner does not need to Order the Legal Aid Office to issue an internal review decision.

Decision

The Information Commissioner finds that the Legal Aid Office failed to issue a decision on the Applicant's request for an internal review within the timeframe in section 43(2) of the Public Access to Information Act 2010.

The Legal Aid Office has issued an internal review decision; therefore, no further action is required by the Legal Aid Office.

Judicial Review

The Applicant, the Legal Aid Office and any other person aggrieved by this Decision have the right to apply to the Supreme Court for judicial 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.

Decided by Jason Outerbridge, Information Commissioner, 15 September 2025

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