Decision Notice

Decision 04/2026: Department of Environment and Natural Resources

Failure to decide: noncompliance with section 43

Review reference no.: **2026005**
Decision date: **6 May 2026**

Summary

On 26 September 2025, the Applicant asked the Department of Environment and Natural Resources (**Department**) for records related to a parcel of land. The Applicant subsequently asked the Department for an internal review of its decision on the request. The Acting Senior Investigation Officer[1] has found that the Department failed to comply with all requirements for an internal review within the six-week statutory timeframe set by section 43(2) of the Public Access to Information Act 2010.

The Acting Senior Investigation Officer has ordered the Department to comply with its section 43 obligations within 10 working days of the issuance of this Decision.

Background and investigation

1. This Decision is for a 'failure to decide' application for an external review by the Information Commissioner under Part 6 of the Public Access to Information (**PATI**) Act 2010.[2] This Decision by the Acting Senior Investigation Officer addresses a public authority's basic obligation to complete 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 26 September 2025, the Applicant made a written PATI request to the Department of Environment and Natural Resources (**Department**) for records related to a parcel of land.

3. On 9 December 2025, the Department issued an initial decision to the Applicant.

4. On 5 January 2026, the Applicant made a timely request for the Head of Public Authority for the Department to conduct an internal review of the Department's initial decision. The six-week internal review deadline was 16 February 2026.

5. On 23 February 2026, the Applicant requested that the Information Commissioner conduct a review of the Department's failure to decide within the six-week statutory time limit.

[1] The Acting Senior Investigation Officer issues this Decision under delegated authority from the Information Commissioner, per section 52A of the PATI Act. For more details, a schedule of delegation is available on ico.bm.

[2] The procedure for this external review follows a Summary Procedure for 'failure to decide' reviews, published March 2026.

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

7. The Acting Senior Investigation Officer decided not to attempt to resolve the matter under section 46 of the PATI Act, because an internal review decision with full reason from the head of the public authority is required before a requester can seek an external review by the Information Commissioner under section 45(1)(a). A section 45(1)(a) review considers the substance of the authority's final decision, including exemptions, search efforts, or administrative denial, etc.

8. A review was commenced under section 47 of the PATI Act, by notice to the Department on 9 April 2026.

9. As required by section 47(4) of the PATI Act, the Department was invited to make representations, by answering standard investigation questions. The ICO's investigation questions addressed whether the Department had, in fact, met its statutory obligations for an internal review within the statutory timeframe set out in section 43 of the PATI Act. At the same time, the ICO strongly encouraged the Head of Public Authority to issue its decision to the Applicant, if they had not already done so, to meet the requirements of section 43 before the deadline of 16 April 2026.

10. The ICO received written submissions from the Head of Public Authority for the Department, the Permanent Secretary for the Ministry of Public Works and Environment, on 16 April 2026. The Head of Public Authority acknowledged that they had taken steps, including additional communication with the requester to clarify the request, which they understood to be conducting an internal review. The Head of Public Authority also acknowledged that they had not issued an internal review decision and had not notified the Applicant of their right to seek an external review by the Information Commissioner. The Head of Public Authority believed at the relevant time that they had complied with its internal review obligations and considered the matter closed.

11. The Applicant was also invited to make representations, if they wished to do so. The ICO received submissions from the Applicant on 14 April 2026, further explaining communications they had with the Department, where the Head of Public Authority indicated they had done a 'cursory review'. The Applicant's submissions reinforced their belief that the Department did not issue an internal review decision on their request within the six weeks' timeframe.

Analysis and findings

Internal review – section 43

12. Section 43 of the PATI Act requires the head of a public authority to conduct an internal review[3] 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:

> ***Conduct of review***
> *43 (1) An internal review of a decision by a public authority, other than a decision made by the head of a public authority, shall be conducted by the* ***head of the public authority*** *concerned.*
>
> *(2) The head of the public authority shall within six weeks after receiving an application for an internal review with respect to a request—*
>
> *(a)* ***complete the review*** *and* ***make a decision*** *with regard to the review; and*
>
> *(b)* ***notify*** *the* ***requester*** *and any third party concerned of—*
>
> *(i) the* ***decision*** *and the* ***reasons*** *for the decision; and*
>
> *(ii) the* ***right*** *of the requester or third party, as the case may be, to* ***apply to the Commissioner for a review*** *of the decision under Part 6.*
>
> [emphasis added]

13. To fully comply with section 43(2), the head of a public authority must satisfy *all* the statutory obligations within six weeks of receiving a request for an internal review.

Discussion

14. It is a matter of fact that the Department did not fully comply with section 43(2) by 16 February 2026; that date being six weeks after the Department received the Applicant's request for an internal review. The Department's noncompliance is outlined in the following analysis.

15. The Head of Public Authority indicated in the Department's submissions 'a review of the original PATI request was conducted…' and that they were 'satisfied the [information] officer provided all information within the possession by the Department', but they offered

[3] Section 41 of the PATI Act sets out the scope of an internal review. Section 42 sets the time limit to apply for an internal review.

no evidence that the Head of Public Authority had communicated this directly to the Applicant on completing an internal review.

16. In its submissions, the Head of Public Authority also described their internal review efforts as focused on prior search efforts and the Applicant's expectation that more records existed. The Head of Public Authority asserted that correspondence with the Applicant seeking additional information about their request—and the Applicant's inability to clarify that information—sufficiently satisfied the obligation to conduct a review.

17. Whilst the Head of Public Authority acted on the Applicant's request for an internal review, the steps taken did not sufficiently demonstrate, on balance of probability, that the Head of Public Authority completed the internal review and made a decision with regard to the review as required by section 43(2)(a).

18. By its own submissions, the Head of Public Authority accepted that they did not notify the Applicant of its internal review decision and the reasons for that decision. Nor did the Head of Public Authority notify the Applicant of their right to apply for an external review by the Information Commissioner about its internal review decision. Therefore, on its face, the Head of Public Authority had not complied with section 43(2)(b).

19. In conclusion, the Acting Senior Investigation Officer finds that the Department failed to fully comply with the requirements for an internal review within the six-week statutory timeframe set by section 43(2) of the PATI Act.

20. By the Order attached to this Decision, the Department is now ordered to satisfy all outstanding section 43(2) obligations, including to complete its review and notify the Applicant of the internal review decision, the reasons for the decision, and the Applicant's right to seek an external review by the Information Commissioner.

Decision

The Acting Senior Investigation Officer finds that the Department of Environment and Natural Resources (**Department**) failed to comply with all requirements for an internal review within the six-week statutory deadline set by section 43(2) of the Public Access to Information Act 2010.

As set forth in the accompanying Order, the Acting Senior Investigation Officer orders the Department to complete its review and notify the Applicant of its internal review decision, the reasons for the decision and of their right to apply to the Information Commissioner for a review of that decision, with a copy to the Office of Information Commissioner, by **Wednesday, 20 May 2026**.

Judicial review

The Applicant, the Department of Environment and Natural Resources and 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 Department of Environment and Natural Resources 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.

Decided by Kentisha Tweed, Acting Senior Investigation Officer, 6 May 2026

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