Decision Notice

Decision 13/2026: Department of Corrections

Failure to decide: noncompliance with section 43

Review reference no.: **2026026**
Decision date: **15 October 2026**

Summary

On 30 April 2026, the Applicant asked the Department of Corrections (**Department**) for records related to staffing, inmate healthcare, rehabilitation programmes and independent assessments of the prison system. The Applicant subsequently requested an internal review by the Head of Public Authority of the Department's failure to make decision on the request.

The Investigative Counsel[1] has found that the Head of Authority for the Department, the Permanent Secretary for the Ministry of Justice, 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.

This Decision has not required further action to be taken by the Department, as they took sufficient corrective steps during the external review.

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 Investigative Counsel 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 30 April 2026, the Applicant made a written PATI request to the Department for records related to staffing, inmate healthcare, rehabilitation programmes and independent assessments of the prison system.

3. The Department did not issue an initial decision to the Applicant.

4. On 18 June 2026, the Applicant made a timely request for the Head of Public Authority for the Department to conduct an internal review. The six-week internal review deadline was 3 August 2026.[3]

[1] The Investigative Counsel 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.

[3] The original deadline of 30 July 2026 fell on the Cup Match public holiday. Accordingly, the deadline was extended to the next business day, 3 August 2026.

5. On 27 August 2026, the Applicant requested that the Information Commissioner conduct a review of the Head of Public Authority's failure to decide within the six-week statutory time limit.

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

7. The Investigative Counsel decided not to attempt to resolve the matter under section 46 of the PATI Act, because an internal review decision with full reasons from the head of a 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 Applicant on 14 September 2026 and notice to the Head of Public Authority on 25 September 2026.

9. As required by section 47(4) of the PATI Act, the Head of Public Authority was invited to make representations, by answering standard investigation questions. The Office of Information Commissioner's (**ICO**) investigation questions addressed whether the Head of Public Authority 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 2 October 2026.

10. The ICO did not receive written submissions from the Head of Public Authority for the Department.

11. The Applicant was also invited to make representations, if they wished to do so. The Applicant did not make submissions.

12. On 9 October 2026, the Head of Public Authority issued the outstanding internal review decision to the Applicant and provided the ICO with a copy.

Analysis and findings

Internal review – section 43

13. Section 43 of the PATI Act requires the head of a public authority to conduct an internal review[4] 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]

14. 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

15. It is a matter of fact that the Head of Public Authority did not comply with section 43(2) because it had not completed the review, had not notified the Applicant of its decision, the reasons for the decision and of the Applicant's right to seek an external review by the Information Commissioner, by 3 August 2026. That date being six weeks after the Head of Public Authority received the Applicant's request for an internal review.

16. The Head of Public Authority did not provide formal submissions in response to the ICO's investigation questions, but in their internal review decision issued on 9 October did accept that they did not issue an internal review decision within the statutory timeframe.

[4] 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.

17. The Investigative Counsel acknowledges that the Head of Public Authority took corrective measures ahead of the issuance of this Decision to bring itself into compliance with all requirements of section 43(2), by completing its review and notifying the Applicant on 9 October 2026 of its late internal review decision, the reasons for the decision and the Applicant's right to seek an external review by the Information Commissioner.

18. Given that the Head of Authority has issued an internal review decision prior to this Decision, the Investigative Counsel does not need to order the Department to take any further action.

Decision

The Investigative Counsel finds that the Head of Public Authority for the Department of Corrections (**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.

No order is required for this Decision because the Head of Public Authority for the Department has fully complied with section 43(2) during this review.

Judicial review

The Applicant, the Department of Corrections 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.

Decided by Kentisha Tweed, Investigative Counsel, 15 October 2026

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