

Decision Notice

Decision 22/2019: Ministry of National Security

***Ex-gratia* payments records: failure to decide within statutory timeframe**

Reference no: 20190909

Decision date: 31 October 2019

Summary

On 3 May 2019, the Applicant asked the Ministry of National Security (**Ministry**) for records of ex-gratia payments made in relation to the protest held on 2 December 2016. This Decision finds that the Ministry failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information (PATI) 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 that was received by the Information Commissioner's Office on 9 September 2019.
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:

Date	Action
3 May 2019	The Applicant made a written PATI request to the Ministry.
24 June 2019	The Ministry issued an initial decision to the Applicant.
8 July 2019	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 Ministry's receipt of the request for one, i.e. by 19 August 2019.
9 September 2019	The Applicant requested an independent review by the Information Commissioner.

16 September 2019	The Ministry was notified in writing that an application had been received from the Applicant. The Ministry was asked to comment on the application.
16 October 2019	The Ministry provided the Applicant with an internal review decision.
	The Ministry chose not to provide submissions to the Information Commissioner for consideration in this review.

Information Commissioner's analysis and findings

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 8 July 2019, the Applicant sent the Ministry of National Security (**Ministry**) an email requesting an internal review. The Applicant did not receive an internal review decision by 19 August 2019.
3. By letter dated 16 September 2019, the Ministry was invited by the Information Commissioner's Office to make submissions on this application. Although a reasonable opportunity to make representations was provided, as required by section 47(4) of the PATI Act, no submissions were received explaining why an internal review decision was not issued by the Ministry within the statutory timeframe.
4. It is a matter of fact that the Ministry did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Ministry failed to comply with section 43(2) of the PATI Act.
5. During the course of this review, the Ministry provided the Applicant with an internal review decision dated 16 October 2019.
6. The Information Commissioner does not require the Ministry to take any further action at this time in relation to the Applicant's request for an internal review.

Decision

The Information Commissioner finds that the Ministry of National Security (**Ministry**) 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 Ministry 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 Ministry issued an internal review decision. Consequently, the Information Commissioner does not require the Ministry to take any further action at this time in respect of this Decision.

Judicial Review

Should the Applicant, the Ministry, 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
31 October 2019

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