

Decision Notice

Decision 11/2021: Office of the Tax Commissioner

Tax and company contract records: failure to decide within statutory timeframe

Reference no: 20210908

Decision date: 7 October 2021

Summary

On 8 April 2021, the Applicant asked the Office of the Tax Commissioner (**OTC**) for records on taxes owed to the government and about a company contract. This Decision finds that the OTC failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information 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 2010 that was received by the Information Commissioner's Office (**ICO**) on 8 September 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:

Date	Action
8 April 2021	The Applicant made a written PATI request to the OTC.
26 April 2021	The OTC notified the Applicant of a three-week extension beyond the standard 6-week initial response period, which would have ended on 20 May 2021.
7 June 2021	The OTC notified the Applicant of another three-week extension and its commitment to provide its initial decision on or before 1 July 2021.
1 July 2021	The Applicant received an initial decision within the extended 12-week period following the OTC's receipt of the PATI request.
4 July 2021	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 OTC's receipt of the request for one, i.e. by 15 August 2021.
8 September 2021	The Applicant requested an independent review by the Information Commissioner.
13 September 2021	The ICO notified the OTC in writing that an application had been received from the Applicant. The OTC was asked to comment on the application.
27 September 2021	The OTC provided submissions to the Information Commissioner for consideration in this review.
7 October 2021	The OTC issued an internal review decision to the Applicant, copied to the ICO.

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 4 July 2021, the Applicant sent the OTC an email requesting an internal review. The Applicant did not receive an internal review decision by 15 August 2021.
3. On 8 September 2021, the Applicant requested an independent review by the Information Commissioner of the OTC's alleged failure to issue an internal review decision.
4. By a letter dated 13 September 2021, the OTC 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 27 September 2021, the OTC accepted that it had not issued an internal review decision within the statutory timeframe and explained its delay related to a pending legal matter.

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

Decision

The Information Commissioner finds that the Office of the Tax Commissioner (**OTC**) 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 Public Access to Information Act 2010. During the course of this review, the OTC issued an internal review decision. Consequently, the Information Commissioner does not require the OTC to take any further action in respect of this Decision.

Judicial Review

Should the Applicant, the OTC, 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
7 October 2021

**Information Commissioner for Bermuda
Maxwell Roberts Building
4th Floor
One Church Street
Hamilton, HM11
www.ico.bm
441-543-3700**