

Decision Notice

Decision 19/2021: Ministry of Social Development and Seniors Headquarters

Records on allegations of misconduct: failure to decide within statutory timeframe

Reference no: 20211201

Decision date: 23 December 2021

Summary

On 3 September 2021, the Ministry of Social Development and Seniors Headquarters (**Ministry Headquarters**) received a request made by the Applicant for a report related to allegations of misconduct. The request was transferred from the Ministry of Legal Affairs and Constitutional Reform Headquarters. The Information Commissioner has found that the Ministry Headquarters 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.

The Information Commissioner has ordered the Ministry Headquarters to comply with the requirement to issue a decision on the request for an internal review on or before Thursday, 27 January 2022.

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 1 December 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 timeframe.
3. Relevant dates include the following:

| Date | Action |
|------------------|---|
| 3 September 2021 | The Ministry Headquarters received the Applicant's written PATI request, which was transferred from the Ministry of Legal Affairs and Constitutional Reform Headquarters ¹ . |
| 15 October 2021 | The Applicant received an initial decision within six weeks of the Ministry Headquarters' receipt of the PATI request. |

¹ The transfer was made in the context of the effort of the Ministry of Legal Affairs and Constitutional Reform Headquarters' to comply with the Information Commissioner's Decision 05/2021.

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| 19 October 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 Ministry Headquarters' receipt of the request for one, i.e., by 30 November 2021. |
| 1 December 2021 | The Applicant requested an independent review by the Information Commissioner. |
| 8 December 2021 | The ICO notified the Ministry Headquarters in writing that an application had been received from the Applicant. The Ministry Headquarters was asked to comment on the application. |
| | The Ministry Headquarters did not provide submissions to the Information Commissioner for consideration in this review. |

Information Commissioner's analysis and findings

Internal Review Decision

4. 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 public 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.
5. On 19 October 2021, the Applicant sent the Ministry Headquarters an email requesting an internal review. The Applicant did not receive an internal review decision by 30 November 2021.
6. On 1 December 2021, the Applicant requested an independent review by the Information Commissioner of the Ministry Headquarters' alleged failure to issue an internal review decision.
7. By letter dated 8 December 2021, the Ministry Headquarters was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act. Although a reasonable opportunity to make representations was provided, no submissions were

received explaining why an internal review decision was not issued by the Ministry Headquarters within the statutory timeframe.

8. It is a matter of fact that the Ministry Headquarters did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Ministry Headquarters failed to comply with section 43(2) of the PATI Act and now orders the Ministry Headquarters to issue an internal review decision by Thursday, 27 January 2022.
9. The Information Commissioner also recommends that the Ministry Headquarters consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timeframe for issuing a decision on the request of 19 October 2021 for an internal review.

Decision

The Information Commissioner finds that the Ministry of Social Development and Seniors Headquarters (**Ministry Headquarters**) 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 (**PATI**) Act 2010.

As set forth in the accompanying Order, the Information Commissioner orders the Ministry Headquarters to provide a decision on the request for an internal review to the Applicant in accordance with section 43 of the PATI Act, with a copy to the Information Commissioner's Office, **on or before Thursday, 27 January 2022**.

Judicial Review

Should the Applicant, the Ministry Headquarters, 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.

Enforcement

This Decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the Ministry Headquarters 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.



Gitanjali S. Gutierrez
Information Commissioner
23 December 2021

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