

Decision Notice

Decision 01/2022: Ministry of Health Headquarters

Payment records: failure to decide within statutory timeframe

Reference no: 20220113-01

Decision date: 26 January 2022

Summary

On 5 October 2021, the Applicant asked the Ministry of Health Headquarters (**Ministry Headquarters**) for records on the Government's Molecular Diagnostic Laboratory, COVID-19 testing programme and payments made to resQwest and resPartner Ltd. 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.

During this review, the Ministry Headquarters issued an internal review decision. Consequently, the Information Commissioner does not require the Ministry Headquarters to take any further action in respect of this Decision.

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 13 January 202.
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
5 October 2021	The Applicant made a written PATI request to the Ministry Headquarters.
31 October 2021	The Ministry Headquarters transferred the Applicant's PATI request in part to another public authority, which left the Ministry Headquarters with two items of the request for its processing.

	The Applicant did not receive an initial decision within six weeks of the Ministry Headquarters' receipt of the PATI request, i.e., by 16 November 2021.
18 November 2021	The Applicant requested an internal review be conducted by the head of the public authority.
19 November 2021	The Ministry Headquarters informed the Applicant that the timeline to issue an initial decision has been extended. The Applicant expressed that they would like to proceed with the internal review request and stated that they can withdraw the internal review request, once an initial decision is issued.
	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 December 2021.
5 January 2022	The Ministry Headquarters informed the Applicant that records responsive to the PATI request will be provided in the coming weeks and some records would be withheld because they are exempt under the PATI Act.
13 January 2022	The Applicant requested an independent review by the Information Commissioner.
18 January 2022	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.
24 January 2022	The Ministry Headquarters issued an internal review decision to the Applicant.

Information Commissioner's analysis and findings

Internal Review Decision

- 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.

5. On 18 November 2021, the Applicant sent the Ministry Headquarters an email requesting an internal review. The Applicant did not receive an internal review decision by 30 December 2021.
6. On 13 January 2022, the Applicant requested an independent review by the Information Commissioner of the Ministry Headquarters' alleged failure to issue an internal review decision.
7. By a letter dated 18 January 2022, the Ministry Headquarters was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act, but written submissions were not received. During this review, however, the Ministry Headquarters provided the Applicant with an internal review decision on 24 January 2022. The Ministry Headquarters' Head of Authority also acknowledged to the Applicant its delay in issuing an internal review decision and provided the understandable explanation that it has been overwhelmed by the more recent COVID-19 outbreaks.
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.
9. The Information Commissioner does not require the Ministry Headquarters to take any further action at this time in relation to the Applicant's request for an internal review. The Information Commissioner expresses appreciation to the Ministry Headquarters for its cooperation and efforts to bring itself into compliance with the PATI Act.

Decision

The Information Commissioner finds that the Ministry of Health Headquarters (**the 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 Act 2010. During this review, the Ministry Headquarters issued an internal review decision. Consequently, the Information Commissioner does not require the Ministry Headquarters to take any further action in respect of this Decision.

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.



Gitanjali S. Gutierrez
Information Commissioner
26 January 2022

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