



Decision Notice

Decision 03/2022: Ministry of Health Headquarters

Financial records: failure to decide within statutory timeframe

Reference no: 20220106-02

Decision date: 28 January 2022

Summary

On 5 October 2021, the Applicant asked the Ministry of Health Headquarters (**Ministry Headquarters**) for the records used to calculate its 'national health emergency' cost centre figures as stated in the Government's 2021/22 Budget Book. This Decision finds 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.

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 6 January 2022.
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. The request was formally acknowledged and assigned reference no. 647.
	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 emailed the Ministry Headquarters' Head of Authority an internal review request, noting that a decision had not been received by the deadline.
19 November 2021	The Ministry Headquarters' Information Officer wrote the Applicant to extend the initial decision timeline by six weeks. The

	Applicant replied by updating the Information Officer of their request for an internal review.
21 November 2021	The Ministry Headquarters' Head of Authority asked the Applicant if they were satisfied with allowing for the Information Officer to continue with an initial decision based on the extension letter. The Applicant replied that they would withdraw their request for an internal review once an initial decision were received.
	The Applicant did not receive an internal review decision within six weeks of the Ministry Headquarters' receipt of their request for one, i.e. by 30 December 2021.
6 January 2022	The Applicant requested an independent review by the Information Commissioner.
10 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.
21 January 2022	The Ministry Headquarters issued an initial decision to the Applicant, copied to the ICO, granting access to records responsive to the PATI request.
24 January 2022	The Ministry Headquarters issued an internal review decision to the Applicant, copied to the ICO, and made submissions to the Information Commissioner for consideration in this review.

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 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 18 November 2021, the Applicant emailed the Ministry Headquarters an internal review request. The Applicant did not receive an internal review decision by 30 December 2021.
6. On 6 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 letter of 10 January 2022, the ICO invited the Ministry Headquarters to make submissions on this application, as required by section 47(4) of the PATI Act. In its submissions, the Ministry Headquarters accepted that its work in handling the Applicant's PATI request was delayed. It had not issued an initial decision to the Applicant "in time to meet the extension requested", and its decision granting access was late. The Ministry Headquarters explained that the delays were due to health professional shortages with impacts across various areas, including specifically that the Information Officer served on its Pandemic Response Team.
8. The Ministry Headquarters issued its internal review decision to the Applicant, on the substantive issue of access to the records, and the Head of Authority gave an understandable explanation for the delays. The internal review decision also was preceded by a late initial decision, which was issued to the Applicant three calendar days before.
9. 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.
10. 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
28 January 2022

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