

Decision Notice

Decision 05/2022: Bermuda Police Service

Personal records: failure to decide within statutory timeframe

Reference no: 20220210-01

Decision date: 17 February 2022

Summary

On 17 November 2021, the Applicant asked the Bermuda Police Service (**BPS**) for certain records relating to them. This Decision finds that the BPS 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 BPS issued an internal review decision. Consequently, the Information Commissioner does not require BPS 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 10 February 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
17 November 2021	The Applicant made a written PATI request to the BPS.
14 December 2021	The BPS issued an initial decision to the Applicant. The Applicant requested an internal review be conducted by the head of public authority.
	The Applicant did not receive an internal review decision within six weeks of the BPS's receipt of the request for one, i.e. by 25 January 2022.

10 February 2022	The Applicant requested an independent review by the Information Commissioner.
11 February 2022	The ICO notified the BPS in writing that an application had been received from the Applicant. The BPS was asked to comment on the application.
16 February 2022	The Information Commissioner received submissions from the BPS, which are considered below. The BPS issued an internal review decision to the Applicant.

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 14 December 2021, the Applicant sent a timely request for an internal review to the BPS. The Applicant did not receive an internal review decision by 25 January 2022.
6. On 10 February 2022, the Applicant requested an independent review by the Information Commissioner of the BPS’s alleged failure to issue an internal review decision.
7. By letter of 11 February 2022, the ICO invited the BPS to make submissions on this review, as required by section 47(4) of the PATI Act.
8. In its submissions, the BPS explained that an internal review was conducted but it had not issued an internal review decision because the requested records related to ongoing proceedings. The BPS was hopeful that the proceedings would be concluded prior to the date an internal review decision was due and thought that the outcome of the proceedings might have an impact on its internal review decision. The proceedings, however, had not been concluded by the time the internal review decision was due.
9. The Information Commissioner acknowledges that the outcome of an internal review decision might be affected by various factors. When those factors might substantively

affect the decision to grant or deny access to records sought in a PATI request, public authorities might find it tempting to postpone the issuance of their decision on the PATI request. The Information Commissioner acknowledges that this approach could sometimes lead to a more efficient handling of the request. She wishes to remind public authorities, however, that the 6-week timeline to conduct an internal review and issue an internal review decision is not extendable. If, as the internal review decision due date approaches, a change of circumstances is unlikely, public authorities should proceed with issuing an internal review decision. This will allow requesters to decide if they wish to apply for an independent review by the Information Commissioner. Public authorities are also welcome to disclose records after an internal review decision has been issued.

10. On 16 February 2022, the BPS provided the Applicant with an internal review decision.
11. It is a matter of fact that the BPS did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the BPS failed to comply with section 43(2) of the PATI Act.
12. The Information Commissioner does not require the BPS 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 BPS for its cooperation and efforts to bring itself into compliance with the PATI Act.

Decision

The Information Commissioner finds that the Bermuda Police Service (**BPS**) 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 BPS issued an internal review decision. Consequently, the Information Commissioner does not require the BPS to take any further action in respect of this Decision.

Judicial Review

Should the Applicant, the BPS, 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
17 February 2022

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