

Decision Notice

Decision 07/2022: Ministry of Finance Headquarters

Minister correspondence with Gencom, its subsidiaries and specified individuals: failure to decide within statutory timeframe

Reference no: 20220224

Decision date: 22 March 2022

Summary

On 25 November 2021, the Applicant asked the Ministry of Finance Headquarters (**Ministry Headquarters**) for the Minister of Finance's correspondence related to Gencom, its subsidiaries and specified individuals. 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 **Tuesday, 19 April 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 24 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
25 November 2021	The Applicant made a written PATI request to the Ministry Headquarters.
	The Applicant did not receive an initial decision within six weeks of the Ministry Headquarters' receipt of the PATI request, i.e., by 6 January 2022.
10 January 2022	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 21 February 2022.
24 February 2022	The Applicant requested an independent review by the Information Commissioner.
25 February 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.
	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 10 January 2022, the Applicant sent the Ministry Headquarters an email requesting an internal review. The Applicant did not receive a substantive response from the Ministry Headquarters.
6. On 24 February 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 dated 25 February 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. 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 Tuesday, 19 April 2022.
9. The Information Commissioner also notes that this current PATI request arises out of a prior PATI request (#627) for the same information for which the Ministry Headquarters did not provide a substantive response. In this prior PATI request process, the Ministry Headquarters led the PATI requester to believe that an initial decision was forthcoming. Unfortunately, one was never provided but the Applicant was out-of-time to seek further review. This current PATI request is a renewed effort to seek access to these public records, and the Ministry Headquarters has repeated its failure to provide a substantive response. The Information Commissioner recommends that the Ministry Headquarters seek training and support to improve their administration of their PATI responsibilities and capacity to uphold Bermudians and residents right to request access to records held by Ministry Headquarters. The purposes in section 2 of the PATI Act to increase transparency and accountability is particularly heightened in light of the significance of the work of the Ministry Headquarters for the people of the Bermuda.
10. 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 an internal review decision.

Decision

The Information Commissioner finds that the Ministry of Finance 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 Tuesday, 19 April 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
22 March 2022

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