

## Decision Notice

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### Decision 10/2022: Bermuda Police Service

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#### **Search warrant emails: failure to decide within statutory timeframe**

**Reference no:** 20220324-01

**Decision date:** 20 April 2022

## Summary

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On 13 October 2021, the Applicant asked the Bermuda Police Service (**BPS**) for emails related to a search warrant. The Information Commissioner has found 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.

The Information Commissioner has ordered the BPS to comply with the requirement to issue a decision on the request for an internal review on or before **Wednesday, 18 May 2022**.

## Background

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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 March 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
13 October 2021	The Applicant made a written PATI request to the BPS.
8 February 2022	The BPS issued an initial decision to the Applicant. 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 BPS's receipt of the request for one, i.e., by 22 March 2022.

24 March 2022	The Applicant requested an independent review by the Information Commissioner.
28 March 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.
	The BPS did not provide submissions to the Information Commissioner for consideration in this review.

## **Information Commissioner’s analysis and findings**

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### *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 8 February 2022, the Applicant emailed the BPS requesting an internal review. The Applicant did not receive a substantive response from the BPS.
6. On 24 March 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 dated 28 March 2022, the BPS 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 BPS within the statutory timeframe.
8. 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 and now orders the BPS to issue an internal review decision by Wednesday, 18 May 2022.
9. The Information Commissioner recommends that the BPS 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

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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 (**PATI**) Act 2010.

As set forth in the accompanying Order, the Information Commissioner orders the BPS 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 Wednesday, 18 May 2022.**

## Judicial Review

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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.

## Enforcement

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This Decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the BPS 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  
20 April 2022

**Information Commissioner for Bermuda  
Maxwell Roberts Building  
4<sup>th</sup> Floor  
One Church Street  
Hamilton, HM11  
[www.ico.bm](http://www.ico.bm)  
441-543-3700**