

Decision Notice

Decision 14/2022: Ministry of National Security Headquarters

**Ministerial statement, legal settlement and Royal Bermuda Regiment
Contingency Fund records: failure to decide within statutory timeframe**

Reference no: 20220420-04

Decision date: 11 May 2022

Summary

On 20 October 2021, the Applicant asked the Ministry of National Security Headquarters (**Ministry Headquarters**) for a Ministerial statement on payments to certain participants in the protest on 2 December 2016 as well as records relating to the payments and the Contingency Fund of the Royal Bermuda Regiment. The Acting 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 Acting Information Commissioner has ordered the Ministry Headquarters to comply with the requirement to issue a decision on the Applicant's request for an internal review on or before **Wednesday, 8 June 2022**.

Background

1. This Acting 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 20 April 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
20 October 2021	The Applicant made a written PATI request to the Ministry Headquarters.
19 November 2021	The Applicant was notified that the Ministry Headquarters was extending the original period by another six weeks, as allowed under section 15(1)(a) of the PATI Act. The new deadline for the Ministry Headquarters to issue its initial decision was 12 January 2022.

23 November 2021	The Ministry Headquarters provided the Applicant with a partial disclosure and informed the Applicant that a further response will be provided.
	The Applicant did not receive an initial decision within twelve weeks of the Ministry Headquarters' receipt of the PATI request, i.e., by 12 January 2022.
22 February 2022	The Ministry Headquarters issued an initial decision out of time.
1 March 2022	The Applicant requested an internal review be conducted by the Ministry Headquarters' Head of Authority.
	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 12 April 2022.
20 April 2022	The Applicant requested an independent review by the Information Commissioner.
22 April 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.
6 May 2022	The Ministry Headquarters made submissions to the Information Commissioner, which are considered below.

Acting 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 1 March 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 20 April 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 22 April 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. In its submissions of 6 May 2022, the Ministry Headquarters explained that an internal review was initiated but not completed. It also acknowledged that an internal review decision was not issued within the statutory timeframe. The Ministry Headquarters submitted that extenuating circumstances existed, which had made both the statutory timeframe and the scope of the review unrealistic to meet and complete. These included the sheer volume of records and the Ministry Headquarters' limited resources due to staff being on leave during the internal review period.
8. The Acting Information Commissioner acknowledges the various challenges experienced by public authorities in meeting the timelines in the PATI Act, particularly when extensive records are involved. Public authorities are reminded that, in those circumstances, it is up to them to explain the volume and nature of the responsive records as well as the challenges they encounter to the requesters. Public authorities are strongly encouraged to, and in some circumstances should, meaningfully assist or offer to assist the requesters to amend their PATI requests.
9. In any event, the six-week internal review timeline is not extendable under the PATI Act and, as such, the heads of authorities are expected to issue an internal review decision with the information and records they had in hand at the relevant time. If circumstances change after an internal review decision is issued, it is always open to the public authority to disclose the responsive records at a later stage, even if an independent review by the Information Commissioner has commenced.
10. 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 Acting 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 Wednesday, 8 June 2022.

11. The Acting 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 Acting Information Commissioner finds that 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 (**PATI**) Act 2010.

As set forth in the accompanying Order, the Acting 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 Wednesday, 8 June 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.



LaKai Dill

Acting Information Commissioner

11 May 2022

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