

Decision Notice

Decision 16/2023: Ministry of Health Headquarters

Records on tech companies and Fastpass: failure to decide within statutory timeframe

Reference no: 20230607-02

Decision date: 3 July 2023

Summary

On 16 December 2022, the Applicant asked the Ministry of Health Headquarters (**Ministry Headquarters**) for various records that relate to BPMS Ltd, Innofund Ltd, Innofund Innovation Incubator Ltd or i3 and the Fastpass port of entry system. 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 **Monday, 31 July 2023**.

Background

1. This Information Commissioner's Decision is for a 'failure to decide' application for review under Part 6 of the Public Access to Information (**PATI**) Act 2010 which was received by the Information Commissioner's Office (**ICO**) on 7 June 2023. It addresses a public authority's basic obligation to respond to a requester's internal review request within the statutory timeframe, not whether a public authority has properly denied access to a record.
2. In this Decision, relevant dates include:

Date	Action
16 December 2022	The Applicant made a written PATI request to the Ministry of Health Headquarters (Ministry Headquarters).
19 January 2023	The Ministry Headquarters notified the Applicant that it was extending the six-week deadline for responding to the PATI request to a further six weeks.
10 March 2023	The Ministry Headquarters issued an initial decision to the Applicant.
23 March 2023	The Applicant made a timely request for the Head of Authority to conduct an internal review; such request was due within six weeks of the date of the initial decision, i.e., by 21 April 2023.

4 May 2023	The statutory deadline passed for the Ministry Headquarters to issue an internal review decision, i.e., within six weeks of its receipt of the Applicant's request for one.
7 June 2023	The Applicant requested an independent review by the Information Commissioner.
15 June 2023	The ICO notified the Ministry Headquarters of this application for review and invited its comments.
28 June 2023	The ICO received the Ministry Headquarters' submissions, which are considered below.

Information Commissioner's analysis and findings

Internal Review Decision

3. 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.
4. On 23 March 2023, the Applicant requested an internal review by the Ministry Headquarters' Head of Authority, who for purposes under the PATI Act is its Permanent Secretary. The Applicant did not receive an internal review decision by 4 May 2023.
5. On 7 June 2023, the Applicant requested an independent review by the Information Commissioner of the Ministry Headquarters' alleged failure to issue an internal review decision.
6. By letter dated 15 June 2023, the ICO invited the Ministry Headquarters to make submissions on this review, as the Information Commissioner is required to do under section 47(4) of the PATI Act.
7. In its submissions to the ICO, the Ministry Headquarters explained that it is in the process of determining its response to the PATI request. It is currently awaiting guidance from the Attorney-General's Chambers concerning the responsive records.

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 Monday, 31 July 2023. The Ministry Headquarters also may wish to consider apologising to the Applicant.

Decision

The Information Commissioner finds that the Ministry of Health 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 **Monday, 31 July 2023**.

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
3 July 2023

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