

Decision Notice

Decision 21/2023: Ministry of Finance Headquarters

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

Reference no: 20230707

Decision date: 1 August 2023

Summary

On 15 December 2022, the Applicant asked the Ministry of Finance Headquarters (**Ministry Headquarters**) for various records that relate to BPMS Ltd, Innofund Ltd, Innofund Innovation Incubator Ltd 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 **Tuesday, 5 September 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 July 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 Finance Headquarters (Ministry Headquarters).
27 January 2023	The statutory deadline passed for the Ministry Headquarters to issue an initial decision, i.e., within six weeks of the PATI request date.
3 March 2023	The Ministry Headquarters attempted to extend the period of time for issuing an initial decision for a further six weeks.
20 April 2023	The Applicant made an out of time request for the Head of Authority to conduct an internal review; such request was due within six weeks of the initial decision due date, i.e., by 10 March 2023. The Head of Authority acknowledged receipt of

	the internal review request and expressed that they would review and revert.
1 June 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 July 2023	The Applicant requested an independent review by the Information Commissioner.
10 July 2023	The ICO notified the Ministry Headquarters of this application for review and invited its comments.
14 & 31 July 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 20 April 2023, the Applicant requested an internal review by the Ministry Headquarters' Head of Authority, who for purposes under the PATI Act is the Acting Financial Secretary. The request for an internal review was accepted and the Applicant did not receive an internal review decision by 1 June 2023.
5. On 7 July 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 10 July 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. In response, the Ministry Headquarters informed the Information Commissioner that the matter was being investigated internally and that it

would continue its work to complete the internal review as a matter of priority. The Ministry Headquarters explained that it faced a number of challenges, including “system issues” and significant Ministry resource challenges.

7. 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, 5 September 2023.

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, 5 September 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
1 August 2023

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