



Decision Notice

Decision 35/2023: Bermuda Police Service

Records on deleted emails: failure to decide within statutory timeframe

Reference no: 20230814

Decision date: 13 October 2023

Summary

On 27 April 2023, the Applicant asked the Bermuda Police Service (**BPS**) for records relating to the alleged deletion of emails of a former Commissioner of Police. 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. During this review, the BPS issued an internal review decision to the Applicant. The Information Commissioner has not required further action in respect of this Decision.

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 14 August 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
27 April 2023	The Applicant made a written PATI request to the Bermuda Police Service (BPS).
8 June 2023	The statutory deadline passed for the BPS to issue an initial decision, i.e., within six weeks of the PATI request date.
21 June 2023	The Applicant made a timely request for the Head of Authority to conduct an internal review.
2 August 2023	The statutory deadline passed for the BPS to issue an internal review decision, i.e., within six weeks of its receipt of the Applicant's request for one.
14 August 2023	The Applicant requested an independent review by the Information Commissioner.

17 August 2023	The ICO notified the BPS of this application for review and invited its comments.
18 August 2023	The BPS made submissions in this review and issued a decision signed by the Information Officer.
13 October 2023	The Applicant was informed that the BPS's Head of Authority adopted the Information Officer's decision of 18 August 2023 as his internal review decision.

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 21 June 2023, the Applicant requested an internal review by the BPS's Head of Authority, who for purposes under the PATI Act is the Commissioner of Police. The Applicant did not receive an internal review decision by 2 August 2023.
5. On 14 August 2023, the Applicant requested an independent review by the Information Commissioner of the BPS's alleged failure to issue an internal review decision.
6. By letter dated 17 August 2023, the ICO invited the BPS to make submissions on this review, as the Information Commissioner is required to do under section 47(4) of the PATI Act. In reply, the BPS explained that relevant information had to be retrieved from its IT Department and that it conflated the PATI request with another PATI request which asked for similar records, resulting in delay in responding to the request. The BPS further explained that, in this case, the Information Officer was not copied on the internal review request, so they were unable to remind the Head of Authority to respond to the request. The BPS submitted that steps were taken internally to ensure the situation has been rectified.

7. 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.
8. On 18 August 2023, the BPS informed the ICO that it had provided a response to the Applicant, dated the same day. The BPS also provided the ICO with a copy of its response. Because the response was signed by the Information Officer, and not by the Commissioner of Police as the BPS's Head of Authority, it was not an internal review decision.
9. On 12 October 2023, the BPS informed the ICO that its Head of Authority has adopted the BPS's response of 18 August 2023 as his internal review decision. The Applicant was informed of this on 13 October 2023. For clarity, the Applicant has six weeks from the date of being notified of the Head of Authority's adoption of the 18 August 2023 response to ask for a substantive independent review by the Information Commissioner.
10. The Information Commissioner does not require the BPS's further action on the Applicant's request for an internal review.

Decision

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 Act 2010. Since the BPS has issued an internal review decision during this review, the Information Commissioner does not require the BPS to take any further action in respect of this Decision.

Judicial Review

The Applicant, the BPS and any other person aggrieved by this Decision have the right to apply to the Supreme Court for review of this Decision, in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.

Gitanjali S. Gutierrez
Information Commissioner
13 October 2023

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