



Decision Notice

Decision 36/2023: Bermuda Police Service

Witness statements: failure to decide within statutory timeframe

Reference no: 2021042

Decision date: 17 October 2023

Summary

On 28 May 2023, the Applicant asked the Bermuda Police Service (**BPS**) for witness statements in relation to the specific residential searches. 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 30 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
28 May 2023	The Applicant made a written PATI request to the Bermuda Police Service (BPS).
10 July 2023	The statutory deadline passed for the BPS to issue an initial decision, i.e., within six weeks of the PATI request date.
16 July 2023	The Applicant made a timely request for the Head of Authority to conduct an internal review.
28 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.
30 August 2023	The Applicant requested an independent review by the Information Commissioner.

31 August 2023	The ICO notified the BPS of this application for review and invited its comments.
17 October 2023	The Head of Authority issued its internal review decision to the Applicant.

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 16 July 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 28 August 2023.
5. On 30 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 31 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. 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. During this review, the BPS issued an internal review decision.
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. 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 future 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
17 October 2023

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