

## Decision Notice

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### Decision 08/2024: Bermuda Police Service

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**Records on non-disclosure agreement: failure to decide within statutory timeframe**

**Reference no: 2024010**

**Decision date: 1 March 2024**

## Summary

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On 19 December 2023, the Applicant asked the Bermuda Police Service (**BPS**) for records relating to a non-disclosure agreement signed by certain police officers in relation to the execution of a search warrant. 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 the 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

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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 9 February 2024. 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
19 December 2023	The Applicant made a written PATI request to the Bermuda Police Service ( <b>BPS</b> ).
28 December 2023	The BPS issued an initial decision to the Applicant.
28 December 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 initial decision, i.e., by 8 February 2024.
8 February 2024	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 on 28 December 2023.

9 February 2024	The Applicant requested an independent review by the Information Commissioner.
14 February 2024	The ICO notified the BPS of this application for review and invited its comments.
15 February and 1 March 2024	The ICO received the BPS's submissions, which are considered below.

## Information Commissioner's analysis and findings

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### *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 28 December 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 8 February 2024.
5. On 9 February 2024, 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 14 February 2024, 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 response, the BPS stated that the delay in responding to the Applicant's request for an internal review stemmed from a combination of factors, including an unexpected surge in the Head of Authority's workload that put a demand on his capacity to handle matters related to PATI, the receipt of multiple concurrent requests for PATI internal reviews, and the fact that the Information Officer was not included in the email correspondence to the Head of Authority when the request for an internal review was made.
7. The BPS has informed the ICO that a new system has been implemented to avoid similar delays in the future and that the BPS is committed to addressing any shortcomings and

improving their procedures to better serve the public and fulfil their obligations under the PATI legislation. The Information Commissioner acknowledges the BPS's commitment to fulfilling their PATI obligations.

8. On 1 March 2024, the BPS issued an internal review decision to the Applicant.
9. 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.
10. As the BPS has issued an internal review decision during this review, the Information Commissioner does not require the BPS to take further action on the Applicant's request for an internal review.

## Decision

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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

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The Applicant, the Bermuda Police Service 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  
1 March 2024

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