

## Decision Notice

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**Decision 29/2022: Ministry of Finance Headquarters**

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**Records on customs duty relief: failure to decide within statutory timeframe**

**Reference no: 20221124**

**Decision date: 19 December 2022**

## Summary

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On 27 July 2022, the Applicant asked the Ministry of Finance Headquarters (**Ministry Headquarters**) for various records relating to Customs duty relief. 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, 23 January 2023**.

## Background

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1. This Information Commissioner's Decision is made in the context of a 'failure to decide' case involving an application for review under Part 6 of the Public Access to Information (**PATI**) Act 2010 that was received by the Information Commissioner's Office (**ICO**) on 24 November 2022.
2. This Decision does not address whether a public authority has properly denied access to a record. Rather, it addresses the basic obligation upon a public authority to respond to a requester within the statutory timeframe.
3. Relevant dates include the following:

Date	Action
27 July 2022	The Applicant made a written PATI request to the Ministry of Finance Headquarters ( <b>Ministry Headquarters</b> ).
7 September 2022	The statutory deadline passed for the Ministry Headquarters to issue an initial decision, i.e., within six weeks of the PATI request date.
4 October 2022	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 due date, i.e., by 19 October 2022.

15 November 2022	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.
24 November 2022	The Applicant requested an independent review by the Information Commissioner.
1 December 2022	The ICO notified the Ministry Headquarters of this application for review and invited its comments.

## **Information Commissioner's analysis and findings**

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### *Internal Review Decision*

4. 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.
5. On 4 October 2022, the Applicant sent the Ministry Headquarters an email requesting an internal review. The Applicant did not receive a substantive response from the Ministry Headquarters.
6. On 24 November 2022, the Applicant requested an independent review by the Information Commissioner of the Ministry Headquarters' alleged failure to issue an internal review decision.
7. By letter dated 1 December 2022, 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. Although a reasonable opportunity to make representations was provided, no submissions were received explaining why an internal review decision was not issued by the Ministry Headquarters within the statutory timeframe.
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, 23 January 2023.

9. The Information Commissioner also recommends that the Ministry Headquarters consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timeframe for issuing an internal review decision.

## Decision

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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 Monday, 23 January 2023**.

## Judicial Review

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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

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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  
19 December 2022

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