

## Decision Notice

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**Decision 01/2017: Ministry of National Security Headquarters**

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**Emails: failure to decide within statutory timeframes**

**Reference no: 05032017**

**Decision date: 28 April 2017**

## Summary

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On 1 October 2016, the Applicant asked the Ministry of National Security Headquarters for email records. This Decision finds that the Ministry of National Security Headquarters failed to decide the Applicant's request for an internal review within the timeframe set out in the Public Access to Information (PATI) Act 2010.

The Information Commissioner has ordered the Ministry of National Security Headquarters to comply with the requirement to issue a decision on the request for an internal review by 19 May 2017.

## 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 PATI Act that was received by the Information Commissioner's Office on 5 March 2017.
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 timeframes.
3. Relevant dates:

Date	Action
1 October 2016	The Applicant made a written PATI request to the Ministry of National Security Headquarters.
9 November 2016	The Ministry of National Security Headquarters informed the Applicant that an extension of time was required to respond to the request.
13 December 2016	The Ministry of National Security Headquarters provided an initial decision in response to the PATI request.
1 January 2017	The Applicant requested an internal review be conducted by the head of the public authority.
	The Applicant did not receive an internal review decision within six weeks of the Ministry of National Security Headquarters' receipt of the request for one.
5 March 2017	The Applicant requested an independent review by the

	<b>Information Commissioner.</b>
<b>20 March 2017</b>	<b>The Ministry of National Security Headquarters was notified in writing that an application had been received from the Applicant. The Ministry of National Security Headquarters was asked to comment on the application.</b>
<b>24 March 2017</b>	<b>The Information Commissioner received submissions from the Ministry of National Security Headquarters. These submissions are considered below.</b>

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

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4. The Ministry of National Security Headquarters has accepted that it did not respond to the Applicant's request for an internal review within the statutory timeframe.
5. Section 43(2) of the PATI Act gives public authorities a maximum of six weeks following the date of receiving a request for an internal review, to provide a decision by the head of the authority. Section 43(2) also requires that an internal review decision must notify the Applicant of the decision, reasons for it, and the right to an independent review by the Information Commissioner.
6. The Ministry of National Security Headquarters' initial decision of 13 December 2016 informed the Applicant that the requested emails did not exist and, to its knowledge, were not held by any other public authority. The PATI request was administratively denied according to section 16(1)(a) of the PATI Act and the Applicant was appropriately informed of the right to seek an internal review. The Applicant did so.
7. The Ministry of National Security Headquarters acknowledged that it received the request for an internal review. It appropriately sought further guidance on how to conduct an internal review when records have not been located. The Ministry of National Security Headquarters did not take further steps, however, to meet its statutory deadline and issue an internal review decision to the Applicant.
8. During the course of this investigation, the Ministry of National Security Headquarters was encouraged to consider the Public Access to Information (PATI) Regulation 5, which speaks to steps to take when conducting searches for responsive records.
9. It is a matter of fact that the Ministry of National Security Headquarters did not provide a decision on the Applicant's request for an internal review within six weeks of receiving the request for an internal review. The Information Commissioner finds that the Ministry of National Security Headquarters failed to comply with section 43(2) of the PATI Act and orders the Ministry of National Security Headquarters to issue an internal review decision by 19 May 2017.

10. Once the Applicant receives the internal review decision, the Applicant will have the right to seek a new review by the Information Commissioner of that internal review decision, as well as any other decision or failure to act related to the Ministry of National Security Headquarters' handling of the Applicant's PATI request.

## Decision

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The Information Commissioner finds that the Ministry of National Security Headquarters failed to comply with Part 5 of the Public Access to Information (PATI) Act 2010 in responding to a request for records made by the Applicant. In particular, the Ministry of National Security Headquarters failed to respond to the Applicant's request for an internal review within the timeframes set forth in section 43(2) of the PATI Act.

As set forth in the accompanying Order, the Information Commissioner orders the Ministry of National Security Headquarters to provide a decision on the request for an internal review by **19 May 2017**.

## Judicial Review

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Should the Applicant, Ministry of National Security 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 of National Security 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  
28 April 2017



**Information Commissioner for Bermuda  
Valerie T. Scott Building  
60 Reid Street  
Hamilton, HM 12  
[www.ico.bm](http://www.ico.bm)  
441-294-9181**