

## Decision Notice

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### Decision 09/2018: Ministry of Public Works Headquarters

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**Foreshore licence application records: failure to decide within statutory timeframes**

**Reference no: 20181015-01**

**Decision date: 31 October 2018**

## Summary

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On 13 July 2018, the Applicant asked the Ministry of Public Works Headquarters for records relating to a foreshore licence application. This Decision finds that the Ministry of Public Works Headquarters failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information (PATI) Act 2010.

## 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 that was received by the Information Commissioner's Office on 15 October 2018.
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
13 July 2018	The Applicant made a written PATI request to the Ministry of Public Works Headquarters ('the Ministry Headquarters').
21 August 2018	The Ministry Headquarters issued an initial decision in response to the PATI request.
2 September 2018	The Applicant submitted a written request for an internal review to the Ministry Headquarters.
	The Applicant did not receive an internal review decision within the six weeks of the Ministry Headquarters' receipt of the request for the internal review.
15 October 2018	The Applicant requested an independent review by the Information Commissioner.
19 October 2018	The Ministry Headquarters was notified in writing that an application had been received from the Applicant. The

	<b>Ministry Headquarters was asked to comment on the application.</b>
<b>23 October 2018</b>	<b>The Information Commissioner received submissions from the Ministry Headquarters. These submissions are considered below.</b>
<b>26 October 2018</b>	<b>The Ministry Headquarters issued an internal review decision to the Applicant.</b>

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

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### *Internal Review Decision*

1. 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 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.
2. On 2 September 2018, the Applicant sent an email requesting an internal review by the head of the Ministry of Public Works Headquarters (**‘Ministry Headquarters’**) who, according to the PATI Act, is the Permanent Secretary for the Ministry of Public Works. The Applicant did not receive an internal review decision by 14 October 2018.
3. The Ministry Headquarters was invited by the Information Commissioner’s Office to make submissions on this application. In its submissions, the Ministry Headquarters accepted that an internal review was not undertaken within the statutory timeframe. The Ministry Headquarters stated that the failure to carry out an internal review may have been due to the fact that the Ministry of Public Works did not have a substantive Permanent Secretary in the six months prior to the current appointment, which was announced on 10 September 2018. This resulted in a number of civil servants covering the role at various times.
4. The Information Commissioner acknowledges the challenges posed by non-substantive appointments and personnel changes when it comes to a public authority’s duty to provide a response to a PATI request or an internal review request within the statutory timeframes. The Information Commissioner notes, however, that public authorities can prevent or minimize these challenges by ensuring that all pending PATI requests or internal review requests are incorporated in a role transition plan or handover report provided to newly appointed personnel.

5. 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 finds that the Ministry Headquarters failed to comply with section 43(2) of the PATI Act.
6. During the course of this review, the Ministry Headquarters adhered to the advice of the Information Commissioner and provided an internal review decision by the head of the authority to the Applicant on 26 October 2018, upholding the initial decision on the PATI request.
7. The Information Commissioner notes that the Applicant made a related PATI request to the Department of Public Lands and Buildings, which was the subject of the Acting Information Commissioner's 'failure to decide' Decision 08/2018 issued on 25 October 2018. In that review, the head of the Department of Public Lands and Buildings—who is also the head of the Ministry Headquarters—explained to the Applicant why an internal review was not conducted within the statutory timeframe and apologised for the delays. The same reasoning has been put forward in this review. As such, the Information Commissioner does not require the Ministry Headquarters to take any further action at this time in relation to the Applicant's request for an internal review.
8. The Information Commissioner received a copy of the Ministry Headquarters' internal review decision. The Applicant now has a 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 by the Ministry Headquarters related to the Applicant's PATI request.

## Decision

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The Information Commissioner finds that the Ministry of Public Works Headquarters failed to comply with Part 5 of the Public Access to Information (PATI) Act 2010 in responding to a request for an internal review made by the Applicant. In particular, the Ministry of Public Works 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 PATI Act.

During the course of this review, the Ministry of Public Works Headquarters issued an internal review decision. Consequently, the Information Commissioner does not need to order the Ministry of Public Works Headquarters to take any further action at this time in respect of this Decision.

## Judicial Review

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Should the Applicant, the Ministry of Public Works 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.



Gitanjali S. Gutierrez  
Information Commissioner  
31 October 2018

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