

## Decision Notice

---

### Decision 10/2018: Attorney General's Chambers

---

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

**Reference no: 20181015-02**

**Decision date: 6 November 2018**

## Summary

---

On 13 July 2018, the Applicant asked the Attorney General's Chambers for records relating to a foreshore licence application. This Decision finds that the Attorney General's Chambers 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.

The Information Commissioner has ordered the Attorney General's Chambers to comply with the requirement to issue a decision on the request for an internal review by 27 November 2018.

## Background

---

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 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 Attorney General's Chambers.
	The Applicant did not receive an initial decision on the PATI request within six weeks of the Attorney General's Chambers' receipt of it, i.e. by 24 August 2018.
2 September 2018	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 Attorney General's Chambers' receipt of the request for one, i.e. by 14 October 2018.

<b>15 October 2018</b>	<b>The Applicant requested an independent review by the Information Commissioner.</b>
<b>19 October 2018</b>	<b>The Attorney General’s Chambers was notified in writing that an application had been received from the Applicant. The Attorney General’s Chambers was asked to comment on the application.</b>
	<b>The Attorney General’s Chambers chose not to provide any submissions to the Information Commissioner for consideration in this Review.</b>

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

---

### *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 Attorney General’s Chambers. The Applicant did not receive an internal review decision by 14 October 2018.
3. By letter dated 19 October 2018, the Attorney General’s Chambers was invited by the Information Commissioner’s Office to make submissions on this Application. Although a reasonable opportunity to make representations was provided, as required by section 47(4) of the PATI Act, no relevant submissions were received explaining why an internal review decision was not issued by the Attorney General’s Chambers within the statutory timeframe.
4. It is a matter of fact that the Attorney General’s Chambers did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner finds that the Attorney General’s Chambers failed to comply with section 43(2) of the PATI Act and orders the Attorney General’s Chambers to issue an internal review decision by 27 November 2018.

5. The Information Commissioner recommends that the Attorney General's Chambers consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timescale for responding to the request for an internal review.

## **Decision**

---

The Information Commissioner finds that the Attorney General's Chambers 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 Attorney General's Chambers 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.

As set forth in the accompanying Order, the Information Commissioner orders the Attorney General's Chambers to provide a decision on the request for an internal review to the Applicant, with a copy to the Information Commissioner's Office, by 27 November 2018.

## **Judicial Review**

---

Should the Applicant, the Attorney General's Chambers, 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**

---

This decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the Attorney General's Chambers 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  
6 November 2018

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