

Decision Notice

Decision 23/2022: Ministry of Economy and Labour Headquarters

Records on Memorandum of Understanding: failure to decide within statutory timeframe

Reference no: 20220705

Decision date: 29 August 2022

Summary

On 17 February 2022, the Applicant asked the Ministry of Economy and Labour Headquarters (**Ministry Headquarters**) for records of any communication with the St. Regis Bermuda Resort or its parent company as related to a Memorandum of Understanding on work permits for closed and restricted categories. This Decision 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 Acting Information Commissioner has ordered the Ministry Headquarters to comply with the requirement to issue a decision on the Applicant's request for an internal review on or before **Monday, 19 September 2022**.

Background

1. This Acting 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 5 July 2022. 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
17 February 2022	The Applicant made a written PATI request to the Ministry of Economy and Labour Headquarters (Ministry Headquarters).
30 March 2022	The Ministry Headquarters notified the Applicant that it was extending the six-week deadline for responding to the PATI request to a further six weeks.
12 May 2022	The extended deadline passed for the Ministry Headquarters to issue an initial decision.
16 May 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 23 June 2022.

27 June 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.
5 July 2022	The Applicant requested an independent review by the Information Commissioner.
18 July 2022	The ICO notified the Ministry Headquarters of this application for review and invited its comments.
11 August 2022	The Ministry Headquarters made submissions to the Information Commissioner, explaining the delay in providing its internal review decision to the Applicant.

Acting Information Commissioner's analysis and findings

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 16 May 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.
5. On 5 July 2022, the Applicant requested the Information Commissioner's independent review of the Ministry Headquarters' alleged failure to issue an internal review decision.
6. By letter dated 18 July 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. On 11 August 2022, the Ministry Headquarters provided submissions explaining the delay in responding to the Applicant's internal review request. The Ministry explained that its delay was due to the time and process involved in retrieving the potentially responsive records for purposes of the internal review.

7. 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 Acting 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, 19 September 2022**.

Decision

The Acting Information Commissioner finds that the Ministry of Economy and Labour 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 Act 2010.

As set forth in the accompanying Order, the Acting 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, 19 September 2022**.

Judicial Review

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

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.



LaKai Dill

Acting Information Commissioner

29 August 2022

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