

## Decision Notice

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### Decision 33/2023: Bermuda Police Service

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**Records on vendor payments: failure to decide within statutory timeframe**

**Reference no: 20230726-02**

**Decision date: 12 September 2023**

## Summary

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On 27 April 2023, the Applicant asked the Bermuda Police Service (**BPS**) for records of vendor payments related to specific investigations. The Information Commissioner has found that the BPS 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 BPS to comply with the requirement to issue a decision on the request for an internal review on or before **Tuesday, 10 October 2023**.

## Background

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1. This 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 26 July 2023. 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  |
|----------------|---|
| 27 April 2023  | The Applicant made a written PATI request to the Bermuda Police Service ( <b>BPS</b> ).   |
| 6 June 2023    | The BPS issued a timely initial decision, i.e., within six weeks of the PATI request date. The same day, the Applicant made a timely request for the Head of Authority to conduct an internal review. |
| 18 July 2023   | The statutory deadline passed for the BPS to issue an internal review decision, i.e., within six weeks of its receipt of the Applicant's request for one.   |
| 26 July 2023   | The Applicant requested an independent review by the Information Commissioner.  |
| 16 August 2023 | The ICO notified the BPS of this application for review and invited its comments.   |

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| 18 August 2023 | The ICO received the BPS's submissions, which are considered below. |
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## Information Commissioner's analysis and findings

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### *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 6 June 2023, the Applicant requested an internal review by the BPS's Head of Authority, who for purposes under the PATI Act is the Commissioner of Police.
5. The BPS's initial decision stated that it could provide the net disbursements to the named vendors, but could not provide the specific disbursement for a particular vendor for a specific investigation. Its initial decision also stated that the BPS was unable to break down payments by specific dates with the sum paid and a description of what the payments related to. No explanation was given for why the BPS could not provide this breakdown and the net disbursement was not included as a disclosure.
6. The Applicant sought an internal review because, in accordance with the Government of Bermuda's Financial Instructions, vendors are required to provide invoices and the details of the services they provide. The Applicant also noted that the net disbursement amounts had not been disclosed with the initial decision. The Applicant did not receive an internal review decision by 18 July 2023.
7. On the same day the Applicant sought an internal review for the reasons stated in paragraph 5, the Applicant emailed the Information Officer seeking the net disbursements that had not yet been disclosed. This resulted in correspondence between the Applicant and Information Officer during 6-22 June 2023. During this time, the Information Officer confirmed the scope of the PATI request with the Applicant and provided the net disbursement figures. Upon receipt of the net disbursement figures, the Applicant asked a series of additional questions for information that were outside the scope of the PATI request. The questions did not seek records, but asked how the figures were calculated and the basis for payment. Although these questions were

outside the scope of the PATI request and were thus asked outside the PATI process, on 22 June 2023, the Information Officer described the queries as amending the PATI request and stated the BPS would enquire into the additional questions.

8. On 26 July 2023, the Applicant applied for an independent review by the Information Commissioner of the BPS's alleged failure to issue an internal review decision. The Applicant copied the BPS on their application to the Information Commissioner. The BPS informed the Applicant on the next day that the additional questions were treated as a new PATI request and provided information responsive to one of the additional questions.
9. By a letter dated 16 August 2023, the ICO invited the BPS to make submissions on this review, as the Information Commissioner is required to do under section 47(4) of the PATI Act. In reply, the BPS explained that it had responded to the additional questions posed by the Applicant in the correspondence with the Information Officer. It appears that, in the BPS's view, it did not need to issue an internal review decision because it has provided the information responsive to the PATI request as well as the additional questions.
10. As explained in prior decisions<sup>1</sup>, the PATI Act's framework identifies specific decision makers for an initial response and internal review. Once a PATI request progresses to the internal review stage, the only decision maker is the head of the authority. This ensures clarity for a PATI requester on the status of the PATI request, preserves the right to further review by the Information Commissioner, and ensures clarity on the deadlines that attach to the requester's rights. While the PATI process may facilitate ongoing dialogue between the PATI requester and the public authority, the request process itself is a confined, formal procedure. PATI requesters should also be mindful that the PATI request process is not an open inquiry, but a procedure for requesting public records.
11. Further, section 12(1) of the PATI Act affords requesters access to public records, not information. A public authority does have an obligation under the duty to assist in section 12 of the PATI Act to help match a requester's information needs with the records that a public authority holds. In some instances, as in this case, a disclosure may lead to further questions about a public authority's work or the records that were provided. As a matter of good customer service, a public authority may engage in ongoing dialogue with a requester about the records provided. Disclosures may also lead to a new PATI request

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<sup>1</sup> See, for example, the discussions in [Decision 19/2022, Department of Communications](#), at paragraphs 14-21, and [Decision 17/2022, Customs Department](#), at paragraphs 10-14.

that seeks additional records as a follow up. Neither of these scenarios, however, replace a requester's right to an internal review by the head of the authority.

12. Here, after an initial decision was issued, the Information Officer and Applicant had discussions about the timeframe for the net disbursement disclosure, which should have been clarified prior to the issuance of the initial decision. Unfortunately, during its post-initial decision communications with the Applicant, the BPS appears to have lost sight of the pending internal review request, which challenged the BPS's initial decision. In their internal review request, the Applicant highlighted records that should exist and be responsive to the PATI request, including, for example, invoices and payment details kept in accordance with Financial Instructions. The BPS has not explained why these records were not located and processed under the PATI Act, or otherwise responded to the request for an internal review.
13. It is a matter of fact that the BPS did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the BPS failed to comply with section 43(2) of the PATI Act and now orders the BPS to issue an internal review decision by Tuesday, 10 October 2023. The BPS also may wish to consider apologising to the Applicant.

## Decision

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The Information Commissioner finds that the Bermuda Police Service (**BPS**) 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 BPS 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 **Tuesday, 10 October 2023**.

## Judicial Review

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The Applicant, the BPS and any other person aggrieved by this Decision have the right to apply to the Supreme Court for review of this Decision, in accordance with section 49 of the PATI Act. Any such application must be made within six months of this Decision.

## Enforcement

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The Decision has been filed with the Supreme Court, in accordance with section 48(3) of the PATI Act. If the BPS 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  
12 September 2023

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