

Decision Notice

Decision 08/2019: Police Complaints Authority

Meeting minutes, litigation, complaint and investigation records: failure to decide within statutory timeframes

Reference no: 20190205

Decision date: 1 April 2019

Summary

On 16 October 2018, the Applicant asked the Police Complaints Authority for various records, including its meeting minutes and complaint and investigation records. This Decision finds that the Police Complaints Authority 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

1. This Acting 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 February 2019.
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
16 October 2018	The Applicant made a written PATI request to the Police Complaints Authority.
	The Applicant did not receive an initial decision on the PATI request within six weeks of the Police Complaints Authority's receipt of it on 16 October 2018, i.e., 27 November 2018.
18 December 2018	The Applicant received a record responsive to the PATI request, but was advised by the sender that she "is not a PATI officer" and the information was provided "at the request of [the] Chairman" of the Police Complaints Authority.

19 December 2018	<p>The Applicant informed the Chairman of the Police Complaints Authority of their intention to seek an internal review to the Governor.</p> <p>The Applicant requested an internal review to be conducted by the Governor.</p>
28 December 2018	Government House notified the Police Complaints Authority of the Applicant's request for an internal review.
21 January 2019	The Police Complaints Authority informed Government House that it is not a public authority under the PATI Act.
4 February 2019	Government House forwarded the Police Complaints Authority's email of 21 January 2019 to the Applicant.
5 February 2019	The Applicant requested an independent review by the Information Commissioner.
22 February 2019	<p>The Police Complaints Authority was notified in writing by the ICO that an application had been received from the Applicant. The Police Complaints Authority was asked to comment on the application.</p> <p>The Police Complaints Authority provided submissions, explaining that it does not consider itself a public authority under the PATI Act and that it never received a direct request for an internal review.</p>
27 February 2019	The ICO informed the Police Complaints Authority of its preliminary view that the Police Complaints Authority is a public authority under the PATI Act.
13 March 2019	The Information Commissioner received submissions from the Police Complaints Authority, agreeing that it is a public authority under the PATI Act.
25 March 2019	The Police Complaints Authority issued an internal review decision.

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 19 December 2018, the Applicant sent an email to the Governor requesting an internal review of the response provided by the Police Complaints Authority ('Authority') to the PATI request. The Applicant did not send the internal review request to the Chairman of the Authority because the Applicant relied on the information on the website of the Information Commissioner's Office (ICO). Due to an administrative error, at the time of the request for an internal review the ICO website listed the incorrect Head of Authority.
3. Government House notified the Authority of the internal review request on 28 December 2018.
4. On 4 February 2019, the Applicant received an email from Government House, forwarding an email from the Authority. The Authority's email informed the Applicant, among other things, that the Authority does not consider itself a public authority under the PATI Act.
5. The Authority was invited by the Information Commissioner's Office to make submissions on this Application. In its submissions, the Authority explained that it is not a public authority under the PATI Act. The Authority, however, accepted during the review that it is a public authority under paragraph 13 of the Schedule to the PATI Act after receiving the preliminary view of the Information Commissioner's Office on the matter.
6. The Authority also submitted that it never received a direct request for an internal review. Although the internal review request was made to the Governor, the Authority was aware of it as it was brought to the attention of the Head of Authority by Government House at least by 28 December 2018.
7. It is a matter of fact that the Authority did not provide the Applicant with an internal review decision within the statutory timeframe. The Acting Information Commissioner finds that the Authority failed to comply with section 43(2) of the PATI Act.

8. During the course of this review, the Authority adhered to the advice of the Information Commissioner's Office and provided an internal review decision to the Applicant on 25 March 2019. As such, the Acting Information Commissioner does not require the Authority to take any further action at this time in relation to the Applicant's request for an internal review.
9. The Information Commissioner's Office received a copy of the Authority's 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 Authority related to the Applicant's PATI request.

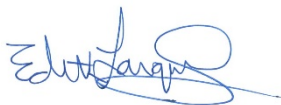
Decision

The Acting Information Commissioner finds that the Police Complaints Authority 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 Police Complaints Authority 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 Authority issued an internal review decision. Consequently, the Acting Information Commissioner does not need to order the Authority to take any further action at this time in respect of this Decision.

Judicial Review

Should the Applicant, the Police Complaints Authority, 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.



Edith Farquharson

Acting Information Commissioner

1 April 2019

**Information Commissioner for Bermuda
Valerie T. Scott Building
60 Reid Street
Hamilton, HM 12
www.ico.bm
441-294-9181**