

Decision Notice

Decision 04/2021: Bermuda Housing Corporation

Property sale records: failure to decide within statutory timeframe

Reference no: 20210704

Decision date: 20 July 2021

Summary

On 9 February 2021, the Applicant asked the Bermuda Housing Corporation (**BHC**) for a copy of property sale records. This Decision finds that the BHC failed to decide the Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information Act (**PATI**) 2010.

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 (**ICO**) on 4 July 2021.
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 include the following:

Date	Action
9 February 2021	The Applicant made a written PATI request to the BHC.
23 March 2021	The Applicant received an initial decision within six weeks of the BHC's receipt of the PATI request.
4 May 2021	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 BHC's receipt of the request for one, i.e., by 15 June 2021.
4 July 2021	The Applicant requested an independent review by the Information Commissioner.

6 July 2021	The BHC was notified in writing that an application had been received from the Applicant. The BHC was asked to comment on the application.
16 July 2021	The BHC issued an internal review decision to the Applicant and provided submissions to the Information Commissioner for consideration in this review.

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 4 May 2021, the Applicant sent the BHC an email requesting an internal review. The Applicant did not receive an internal review decision by 15 June 2021.
3. On 4 July 2021, the Applicant requested an independent review of the BHC's alleged failure to issue an internal review decision.
4. By a letter dated 6 July 2021, the BHC was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act. In its submissions made on 16 July 2021, the BHC accepted that it had not issued an internal review decision within the statutory timeframe. The BHC explained that the delay in issuing the internal review decision related to changes in leadership at the board and executive levels.
5. It is a matter of fact that the BHC did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the BHC failed to comply with section 43(2) of the PATI Act.
6. During the course of this review, the BHC provided the Applicant with an internal review decision, including its reasons, dated 16 July 2021. The BHC's Head of Authority acknowledged its failure to comply with the statutory timeframe.

7. The Information Commissioner does not require the BHC to take any further action at this time in relation to the Applicant's request for an internal review. The Information Commissioner commends the BHC for its responsiveness and cooperation while bringing itself into compliance with the PATI Act.

Decision

The Information Commissioner finds that the Bermuda Housing Corporation (**BHC**) 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 BHC 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 BHC issued an internal review decision. Consequently, the Information Commissioner does not require the BHC to take any further action in respect of this Decision.

Judicial Review

Should the Applicant, the BHC, 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
20 July 2021

**Information Commissioner for Bermuda
Maxwell Roberts Building
4th Floor
One Church Street
Hamilton, HM11
www.ico.bm
441-543-3700**