

## Decision Notice

---

### Decision 16/2021: Department of Public Lands and Buildings

---

#### **Tudor farm records: failure to decide within statutory timeframe**

**Reference no: 20211130**

**Decision date: 17 December 2021**

## Summary

---

On 8 September 2021, the Applicant asked the Department of Public Lands and Buildings (**Department**) for records relating to Tudor Farm. The Information Commissioner has found that the Department 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 Department to comply with the requirement to issue a decision on the request for an internal review on or before **Friday, 21 January 2022**.

## 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 Public Access to Information (**PATI**) Act 2010 that was received by the Information Commissioner's Office (**ICO**) on 30 November 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 timeframe.
3. Relevant dates include the following:

Date	Action
8 September 2021	The Applicant made a written PATI request to the Department.
	The Applicant did not receive an initial decision within six weeks of the Department's receipt of the PATI request, i.e., by 20 October 2021.
19 October 2021	The Applicant requested an internal review be conducted by the head of the public authority.
30 November 2021	The Applicant requested an independent review by the Information Commissioner.

	The Applicant did not receive an internal review decision within six weeks of the Department's receipt of the request for one, i.e., by 1 December 2021.
2 December 2021	The ICO notified the Department in writing that an application had been received from the Applicant. The Department was asked to comment on the application.
	The Department did not provide submissions to the Information Commissioner for consideration in this review.

## Information Commissioner's analysis and findings

---

### *Internal Review Decision*

4. 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.
5. On 19 October 2021, the Applicant sent the Department an email requesting an internal review. The Applicant did not receive a substantive response from the Department.
6. On 30 November 2021, towards the close of the business day, the Applicant requested an independent review by the Information Commissioner of the Department's alleged failure to issue an internal review decision. While technically the Applicant's application to the Information Commissioner was made a day before the internal review decision was due, the Information Commissioner treated the application as valid, because the Applicant did not receive an internal review decision by 1 December 2021.
7. By letter dated 2 December 2021, the Department was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act. Although a reasonable opportunity to make representations was provided, no submissions were received explaining why an internal review decision was not issued by the Department within the statutory timeframe.
8. It is a matter of fact that the Department did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied

that the Department failed to comply with section 43(2) of the PATI Act and now orders the Department to issue an internal review decision by Friday, 21 January 2022.

9. The Information Commissioner also recommends that the Department consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timeframe for issuing a decision on the request of 19 October 2021 for an internal review.

## Decision

---

The Information Commissioner finds that the Department of Public Lands and Buildings (**Department**) 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 Department 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 Friday, 21 January 2022.**

## Judicial Review

---

Should the Applicant, the Department, 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 Department 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  
17 December 2021

**Information Commissioner for Bermuda  
Maxwell Roberts Building  
4<sup>th</sup> Floor  
One Church Street  
Hamilton, HM11  
[www.ico.bm](http://www.ico.bm)  
441-543-3700**