

Decision Notice

Decision 03/2019: Bermuda Casino Gaming Commission

Records on Bermuda's betting shops: failure to decide within statutory timeframes

Reference no: 20181211-01

Decision date: 5 February 2019

Summary

On 21 November 2017, the Applicant asked the Bermuda Casino Gaming Commission for records relating to Bermuda's betting shops. This Decision finds that the Bermuda Casino Gaming Commission 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.

The Information Commissioner has ordered the Bermuda Casino Gaming Commission to comply with the requirement to issue a decision on the request for an internal review by Tuesday, 19 March 2019.

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 that was received by the Information Commissioner's Office on 11 December 2018.
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
21 November 2017	The Applicant made a written PATI request to the Bermuda Casino Gaming Commission.
14 December 2017	The Bermuda Casino Gaming Commission notified the Applicant that it required an extension until 14 February 2018 to respond to the PATI request.
24 January 2018	The Bermuda Casino Gaming Commission issued an initial decision indicating that a further decision would be issued in the future.
29 & 30 May 2018	The Applicant followed up with the Bermuda Casino Gaming Commission on the status of the PATI request.

3 July 2018	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 Bermuda Casino Gaming Commission's receipt of the request for one, i.e. by 14 August 2018.
11 December 2018	The Applicant requested an independent review by the Information Commissioner.
10 January 2019	The Bermuda Casino Gaming Commission was notified in writing that an application had been received from the Applicant. The Bermuda Casino Gaming Commission was asked to comment on the application.
	The Bermuda Casino Gaming Commission chose not to provide any submissions to the Information Commissioner for consideration in this Review.

Information Commissioner's analysis and findings

Initial decision – section 14

1. Section 14(1) of the Public Access to Information (**PATI**) Act 2010 gives public authorities six weeks, following the date of receipt of the PATI request, to provide an initial decision. Immediately after making its initial decision, section 14(2) requires public authorities to notify the requester in writing of its decision, the reasons for it and the right to seek an internal review by a head of the authority. This framework provides clarity for both the requester and public authority on the status of the PATI request.
2. On 24 January 2018, the Bermuda Casino Gaming Commission (**'the Gaming Commission'**) issued an initial decision that appears to both deny and grant the PATI request indicating that a further decision would be issued in the future. The initial decision stated that the Applicant would be granted access to the records once the requested information fell outside of section 29, i.e., once governmental deliberations were complete. The PATI Act does not make provisions for the issuance of such a decision.
3. The Gaming Commission never granted access to the requested records. The Applicant was left in a suspended state, waiting for a further decision from the Gaming Commission that would grant access to the records. The timeline with respect to the Applicant's request for

an internal review, therefore, is misleading as no initial decision in accordance with section 14 was issued.

4. The Information Commissioner notes that this case highlights the confusion that can arise when neither the Applicant nor the public authority has clarity about whether an initial decision has been issued, and whether the statutory timeframes have commenced. While the PATI Act allows public authorities to continue processing a PATI request after an initial decision has been issued (and the Information Commissioner encourages this) a public authority cannot issue an initial decision indicating that a further decision will be made (without specifying a date), which may prevent an Applicant from progressing their application through the appeal stages under the PATI Act.
5. Rather, section 14 requires a public authority to issue its initial decision either granting or denying access to the record. The public authority may also indicate to a requester that it is continuing to process the request or provide any other information that it finds helpful to explain its position. A requester might then wait until the end of the six week statutory time period before seeing what the public authority does and deciding whether to seek an internal review.

Internal Review Decision

6. 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.
7. On 3 July 2018, the Applicant sent an email requesting an internal review by the head of the Gaming Commission who, according to the Schedule to the PATI Act, is the Chairperson of the Gaming Commission. The Applicant did not receive an internal review decision by 14 August 2018.
8. The Applicant requested an independent review of the Gaming Commission's failure to decide on 11 December 2018. The PATI Act requires a requester to ask the Information Commissioner to review a public authority's failure to issue an internal review decision within six weeks after that internal review decision was due. The Applicant's request for an independent review, therefore, was late.
9. The Information Commissioner has the discretion to accept a late application for review under section 45(2) of the PATI Act. On 10 January 2019, the Information Commissioner

exercised this discretion on the basis that the Gaming Commission did not inform the Applicant of their rights to a review and that the Applicant had genuine confusion about the review timeframes where there was a failure to decide by the public authority. The Applicant's application was therefore accepted.

10. By letter dated 10 January 2019, the Bermuda Casino Gaming Commission was invited by the Information Commissioner's Office to make submissions on this Application. Although a reasonable opportunity to make representations was provided, as required by section 47(4) of the PATI Act, no relevant submissions were received explaining why an internal review decision was not issued by the Bermuda Casino Gaming Commission within the statutory timeframe.
11. It is a matter of fact that the Bermuda Casino Gaming Commission did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner finds that the Bermuda Casino Gaming Commission failed to comply with section 43(2) of the PATI Act and orders the Bermuda Casino Gaming Commission to issue an internal review decision by Tuesday, 19 March 2019.
12. The Information Commissioner recommends that the Bermuda Casino Gaming Commission consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timescale for responding to the request for an internal review.

Decision

The Information Commissioner finds that the Bermuda Casino Gaming Commission 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 Bermuda Casino Gaming Commission 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.

As set forth in the accompanying Order, the Information Commissioner orders the Bermuda Casino Gaming Commission to provide a decision on the request for an internal review to the Applicant, with a copy to the Information Commissioner's Office, by 19 March 2019.

Judicial Review

Should the Applicant, the Bermuda Casino Gaming Commission, 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 Bermuda Casino Gaming Commission 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
5 February 2019

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