

## Decision Notice

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### Decision 04/2019: Bermuda Casino Gaming Commission

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**Correspondence with the National Anti-Money Laundering Committee (NAMLC): failure to decide within statutory timeframes**

**Reference no: 20181211-02**

**Decision date: 5 February 2019**

## Summary

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On 31 January 2018, the Applicant asked the Bermuda Casino Gaming Commission for all communications between the Bermuda Casino Gaming Commission and the National Anti-Money Laundering Committee (NAMLC). 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.

## Background

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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
31 January 2018	The Applicant made a written PATI request to the Bermuda Casino Gaming Commission.
8 March 2018	The Bermuda Casino Gaming Commission issued its initial decision on the request for records.
13 March 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 24 April 2018.
11 December 2018	The Applicant requested an independent review by the Information Commissioner.

<p><b>10 January 2019</b></p>	<p><b>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.</b></p>
<p><b>22 January 2019</b></p>	<p><b>The Bermuda Casino Gaming Commission issued an internal review decision.</b></p>
<p><b>4 February 2019</b></p>	<p><b>The Information Commissioner received submissions from the Bermuda Casino Gaming Commission. These submissions are considered below.</b></p>

## **Information Commissioner’s analysis and findings**

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### *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 13 March 2018, the Applicant sent an email requesting an internal review by the head of the Bermuda Casino Gaming Commission (**‘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 24 April 2018.
3. 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.
4. 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.

5. The Gaming Commission was invited by the Information Commissioner's Office to make submissions on this application. In its submissions, the Gaming Commission stated that the failure to carry out an internal review may have been due to a computer and email system failure that occurred in April 2018, the time at which the internal review decision was due. The Gaming Commission submitted that it had drafted the internal review decision and intended to issue it, but due to the system failure a number of emails failed to send. The Gaming Commission was unaware that the email attaching the internal review decision had failed to send.
6. It is a matter of fact that the Gaming Commission did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner finds that the Gaming Commission failed to comply with section 43(2) of the PATI Act.
7. During the course of this review, the Gaming Commission provided an internal review decision by the head of the authority to the Applicant on 22 January 2019 (the decision itself dated 17 April 2018), upholding the initial decision on the PATI request.
8. The Information Commissioner does not require the Gaming Commission to take any further action at this time in relation to the Applicant's request for an internal review.
9. The Information Commissioner received a copy of the Gaming Commission's internal review decision. The Applicant has sought a new review by the Information Commissioner of that internal review decision.

## Decision

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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.

During the course of this review, the Bermuda Casino Gaming Commission issued an internal review decision. Consequently, the Information Commissioner does not need to order the Bermuda Casino Gaming Commission to take any further action at this time in respect of this Decision.

## Judicial Review

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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.



Gitanjali S. Gutierrez  
Information Commissioner  
5 February 2019

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