

Decision Notice

Decision 18/2021: Cabinet Office

Premier's correspondence related to Gencom, its subsidiaries and specified individuals: failure to decide within statutory timeframe

Reference no: 20211119

Decision date: 21 December 2021

Summary

On 15 January 2021, the Applicant asked the Cabinet Office for the Premier's correspondence related to Gencom, its subsidiaries and specified individuals. The Information Commissioner has found that the Cabinet Office 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 Cabinet Office to comply with the requirement to issue a decision on the request for an internal review on or before Tuesday, 25 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 19 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
15 January 2021	The Applicant made a written PATI request to the Cabinet Office.
	The Applicant did not receive an initial decision within six weeks of the Cabinet Office's receipt of the PATI request, i.e., by 26 February 2021.
1 March 2021	The Applicant consented in writing for the Cabinet Office to narrow the responsive timeframe for the requested records.
9 September 2021	The Applicant asked the Cabinet Office for an internal review of the failure to provide an initial decision. The Applicant invited the

	Head of Authority to exercise discretion in accepting their late application for an internal review, explaining they had awaited the initial decision in good faith based on various updates from the Cabinet Office between May and August 2021.
10 September 2021	The Head of Authority acknowledged receipt of the Applicant's request for an internal review.
21 September 2021	The Cabinet Office issued an initial decision out of time, granting public access to responsive records.
5 October 2021	About two weeks before the Applicant was due to receive a decision on the Cabinet Office's failure to provide an initial decision, the Applicant emailed the Head of Authority, asking now to change the scope of the internal review to consideration of the substantive initial decision issued on 21 September 2021. The Head of Authority acknowledged receipt.
	The Applicant did not receive an internal review decision within six weeks of the Cabinet Office's receipt of the request for one on 5 October 2021, i.e., by 16 November 2021.
19 November 2021	The Applicant requested an independent review by the Information Commissioner.
2 December 2021	The ICO notified the Cabinet Office in writing that an application had been received from the Applicant. The Cabinet Office was asked to comment on the application.
	The Cabinet Office 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 5 October 2021, the Applicant made a timely request for an internal review of the substantive initial decision on their PATI request. The Applicant did not receive an internal review decision by 16 November 2021.
6. On 19 November 2021, the Applicant requested an independent review by the Information Commissioner of the Cabinet Office's alleged failure to issue an internal review decision.
7. By letter dated 2 December 2021, the ICO invited the Cabinet Office to make submissions on this review. Although a reasonable opportunity to make representations to the Information Commissioner was provided, as required by section 47(4) of the PATI Act, no submissions were received explaining why an internal review decision was not issued by the Cabinet Office within the statutory timeframe.
8. The Information Commissioner appreciates that, during the initial handling of the PATI request, the Cabinet Office continued to give the Applicant an impression that their revised PATI request was being actively processed and that an initial decision was forthcoming beyond the statutory timeframe. This good intention, though, on the part of the Cabinet Office and the Applicant alike, did not alter the framework of the PATI Act and would have placed the Applicant's rights to review at some risk if an initial response to the PATI request had not been issued.
9. Here, however, the Cabinet Office did issue an initial decision on 21 September 2021, and this is the relevant date for determining the Applicant's further rights to review. The Applicant then made a timely internal review request of the initial decision, in accordance with section 42(1).
10. Although the timeframes for internal reviews are firm, PATI requesters and public authorities may agree to operate beyond them in a cooperative manner. The Information Commissioner encourages parties to take a good faith, practical approach when it is workable to do so. A lenient approach to timeframes may help the requester to access the

records they want more quickly and to a greater extent. However, as shown in this case, it must be balanced with ensuring that the right of review is protected. Here, nothing in the PATI Act would have prevented the Cabinet Office from voluntarily disclosing records at a later time, as a matter of good customer service, while also complying with the statutory timeframes for an internal review.

11. It is a matter of fact that the Cabinet Office did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Cabinet Office failed to comply with section 43(2) of the PATI Act and now orders the Cabinet Office to issue an internal review decision by Tuesday, 25 January 2022.
12. The Information Commissioner also recommends that the Cabinet Office consider whether it is appropriate to apologise to the Applicant for its failure to comply with the statutory timeframe for responding to the request for an internal review.

Decision

The Information Commissioner finds that the Cabinet Office 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 Cabinet Office 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 Tuesday, 25 January 2022**.

Judicial Review

Should the Applicant, the Cabinet Office, 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
21 December 2021

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