

## Decision Notice

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### Decision 21/2021: Cabinet Office

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**Records related to the Government's relationship with MM&I: failure to decide within statutory timeframe**

**Reference no: 20211208**

**Decision date: 31 December 2021**

## Summary

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On 27 July 2021, the Cabinet Office was required by the Information Commissioner to issue an initial decision for its processing of newly located records in response to the Applicant's Public Access to Information (**PATI**) request, asking for records related to the Bermuda Government's business relationship with MM&I Holdings (**MM&I**). 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 PATI Act 2010.

During this review, the Cabinet Office issued an internal review decision. Consequently, the Information Commissioner does not require the Cabinet Office to take any further action in respect of this Decision.

## 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 2010 that was received by the Information Commissioner's Office (**ICO**) on 8 December 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
27 July 2021	<p>The Information Commissioner ordered the Cabinet Office, by her Decision 06/2021, to process newly located records responsive to the Applicant's PATI request dated 13 September 2017, which had been made in writing originally to the former Ministry of Economic Development and Tourism Headquarters and subsequently handled by the Cabinet Office.</p> <p>The Cabinet Office was ordered to issue the initial decision within six weeks, i.e., by 7 September 2021.</p>

21 October 2021	The Applicant received an initial decision from the Cabinet Office, after previously receiving a preliminary decision letter dated 7 September 2021.
26 October 2021	The Applicant asked the Cabinet Office for an internal review of final initial decision.
	The Applicant did not receive an internal review decision within six weeks of the Cabinet Office's receipt of the request for one, i.e., by 7 December 2021.
8 December 2021	The Applicant requested an independent review by the Information Commissioner.
10 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.
30 December 2021	The Cabinet Office issued an internal review decision to the Applicant.

## Information Commissioner's analysis and findings

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### *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 26 October 2021, the Applicant made a timely request for an internal review of the initial decision, which the Cabinet Office issued in the context of the Information Commissioner's Order accompanying Decision 06/2021, Cabinet Office. The Applicant did not receive an internal review decision by 7 December 2021.
6. On 8 December 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 10 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 written submissions were received explaining why an internal review decision was not issued by the Cabinet Office within the statutory timeframe.
8. The Information Commissioner acknowledges that, on receiving the request, the Head of Authority communicated with the Applicant to better understand what they wished the internal review to address. The Applicant made clear their expectation for “the entire decision” to be reviewed and correctly pointed out that they had no obligation to state the grounds for seeking an internal review.
9. The Information Commissioner has explained that the internal review is a ‘fresh look’ at the PATI request by a more senior officer within the public authority. While it can be helpful when a requester shares points of concern or disagreement, the PATI Act does not require it. When a public authority is concerned about the time required to carry out a ‘fresh look’ at a request, where the background and decisions involved are extensive, the Information Commissioner strongly encourages that public authorities maintain communication with requesters if they are unable to meet the statutory timeframes. The six-week internal review timeline is not extendable under the PATI Act.
10. 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.
11. During the course of this review, the Cabinet Office provided the Applicant with an internal review decision dated 30 December 2021. The Cabinet Office’s Head of Authority also acknowledged and apologised to the Applicant for its failure to comply with the statutory timeframe.
12. The Information Commissioner does not require the Cabinet Office to take any further action at this time in relation to the Applicant’s request for an internal review. The Information Commissioner expresses appreciation to the Cabinet Office for its cooperation and efforts to bring itself into compliance with the PATI Act.

## Decision

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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 Act 2010. During this review, the Cabinet Office issued an internal review decision. Consequently, the Information Commissioner does not require the Cabinet Office to take any further action in respect of this Decision.

## Judicial Review

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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.



Gitanjali S. Gutierrez  
Information Commissioner  
31 December 2021

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