



Decision Notice

Decision 04/2022: Cabinet Office

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

Reference no: 20220110

Decision date: 28 January 2022

Summary

On 5 October 2021, the Applicant asked the Cabinet Office for the Premier’s correspondence related to Gencom, its subsidiaries and specified individuals. This Decision finds 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.

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 10 January 2022.
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
5 October 2021	The Applicant made a written PATI request to the Cabinet Office. The topic related to a prior PATI request made to the Cabinet Office on 15 January 2021, as seen in Decision 18/2021, Cabinet Office .
	The Applicant did not receive an initial decision within six weeks of the Cabinet Office’s receipt of this PATI request, i.e. by 16 November 2021.
19 November 2021	The Applicant emailed the Cabinet Office’s Head of Authority an internal review request, noting that a decision had not yet been received.
	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 31 December 2021.

10 January 2022	The Applicant requested an independent review by the Information Commissioner.
18 January 2022	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.
28 January 2022	The Cabinet Office issued an internal review decision to the Applicant, copied to the Information Commissioner, which amended its letter originally emailed on 25 January 2022. The same letter included the Head of Authority's internal review decision on the Applicant's prior PATI request, as required by Decision 18/2021.

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 November 2021, the Applicant sent a timely request for an internal review to the Cabinet Office, because an initial decision on their PATI request had not been received. The Applicant did not receive an internal review decision by 31 December 2021.
6. On 10 January 2022, 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 of 18 January 2022, the ICO invited the Cabinet Office to make submissions on this review, as required by section 47(4) of the PATI Act. Written submissions were not received.
8. On 28 January 2022, the Cabinet Office provided the Applicant with an amended internal review decision. The Cabinet Office did not acknowledge the delays in issuing a decision on access to the requested records, although it set out relevant details of the timeline for handling the Applicant's separate requests for records on a related topic.

9. 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.
10. 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

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. 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

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
28 January 2022

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