

## Decision Notice

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### Decision 13/2022: Cabinet Office

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#### **Records on MM&I: failure to decide within statutory timeframe**

**Reference no:** 20220324-02

**Decision date:** 10 May 2022

## Summary

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This review arises from an initial decision made by the Cabinet Office on 21 October 2021 to grant, in part, a request for records concerning the relationship between the Government of Bermuda and MM&I Holdings Ltd. (**MM&I**). The Cabinet Office issued the initial decision to the original PATI requester and a concerned third party (Third Party Applicant). This Decision has found that the Cabinet Office failed to decide on the Third Party Applicant's request for an internal review within the statutory timeframe set forth by the Public Access to Information Act 2010.

The Acting Information Commissioner has ordered the Cabinet Office to comply with the requirement to issue a decision on the Third Party Applicant's request for an internal review on or before **Tuesday, 7 June 2022**.

## Background

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1. This Acting 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 24 March 2022. It is the Information Commissioner's first decision on an application made by a third party affected by a public authority's decisions on a PATI request.
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 request for an internal review within the statutory timeframe.
3. Relevant dates include the following:

Date	Action
13 September 2017	A written PATI request was filed at the then Ministry of Economic Development and Tourism Headquarters, which was later disbanded and replaced by the Ministry of Tourism and Transport Headquarters.

July 2020	Due to another Government restructuring, tourism matters, including gaming, were transferred to the Cabinet Office.
27 July 2021	The Information Commissioner issued Decision 06/2021, <u>Cabinet Office</u> , which required the Cabinet Office to, among others, issue an initial decision on newly identified records.
21 October 2021	The Cabinet Office issued an initial decision to the original PATI requester and the Third Party Applicant.
1 November 2021	The Third Party Applicant requested an internal review be conducted by the Cabinet Office's Head of Authority.
	The Third Party Applicant did not receive an internal review decision within six weeks of the Cabinet Office's receipt of their request for one, i.e., by 13 December 2021.
24 March 2022	The Third Party Applicant requested an independent review by the Information Commissioner.
11 April 2022	The ICO notified the Cabinet Office in writing that an application had been received from the Third Party 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.

## **Acting Information Commissioner's analysis and findings**

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### *Internal Review Decision*

- Section 41 of the PATI Act gives a requester or a third party the right to seek an internal review of a public authority's initial decision on a PATI request. 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. In the case of a third party's request for an internal review, section 43(2) also requires that the head of the public authority notify the third party of: the internal review decision, the reasons for the decision, and their right to seek an independent review by the Information Commissioner.

5. On 1 November 2021, the Third Party Applicant sent the Cabinet Office a letter requesting an internal review. The Third Party Applicant did not receive a substantive response from the Cabinet Office.
6. On 24 March 2022, the Third Party Applicant requested an independent review by the Information Commissioner of the Cabinet Office's alleged failure to issue an internal review decision. The Information Commissioner exercised her discretion under section 45(2) to accept the Third Party Applicant's late application.
7. By letter dated 11 April 2022, the Cabinet Office was invited by the ICO to make submissions on this application, as required by section 47(4) of the PATI Act. Although a reasonable opportunity to make representations was provided, no submissions were received explaining why an internal review decision was not issued by the Cabinet Office within the statutory timeframe.
8. It is a matter of fact that the Cabinet Office did not provide the Third Party Applicant with an internal review decision within the statutory timeframe. The Acting 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, 7 June 2022.
9. The Acting Information Commissioner also recommends that the Cabinet Office consider whether it is appropriate to apologise to the Third Party Applicant for its failure to comply with the statutory timeframe for issuing an internal review decision.

## Decision

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The Acting Information Commissioner finds that the Cabinet Office failed to issue a decision on the Third Party 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 Acting Information Commissioner orders the Cabinet Office to provide a decision on the request for an internal review to the Third Party Applicant in accordance with section 43 of the PATI Act, with a copy to the Information Commissioner's Office, **on or before Tuesday, 7 June 2022**.

## Judicial Review

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Should the Third Party 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

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This Decision has been filed with the Supreme Court, according to section 48(3) of the PATI Act. If the Cabinet Office 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.



LaKai Dill  
Acting Information Commissioner  
10 May 2022

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