

Decision Notice

Decision 12/2022: Cabinet Office

Records on Molecular Diagnostic Laboratory: failure to decide within statutory timeframe

Reference no: 20220321

Decision date: 9 May 2022

Summary

On 5 October 2021, the Applicant asked the Ministry of Health Headquarters (**Ministry Headquarters**) for various records relating to the Molecular Diagnostic Laboratory. The Ministry Headquarters transferred the request in part to the Cabinet Office. 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 **Monday, 6 June 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 21 March 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 Ministry Headquarters.
31 October 2021	The Ministry Headquarters transferred the PATI request, in part, to the Cabinet Office.
	The Applicant did not receive an initial decision within six weeks of the Cabinet Office's receipt of the transferred PATI request, i.e., by Monday, 13 December 2021.

18 January 2022	The Applicant requested an internal review be conducted by the Cabinet Office's Head of Authority.
	The 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 1 March 2022.
21 March 2022	The Applicant requested an independent review by the Information Commissioner.
22 March 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.
5 April 2022	The Cabinet Office made submissions to the Information Commissioner, which are considered below.

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 18 January 2022, the Applicant sent the Cabinet Office an email requesting an internal review. The Applicant did not receive a substantive response from the Cabinet Office.
6. On 21 March 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 dated 22 March 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. In its submissions of 5 April 2022, the Cabinet Office implied that it had not carried out an internal review decision within the statutory timeframe. The submissions enclosed information relating to items 2 to 6 of the PATI request, along with potentially responsive

records. The Cabinet Office also explained its view that the scope of item 1 of the PATI request was too broad and should be narrowed. In response to the Cabinet Office's request for guidance on how to handle the PATI request, the ICO strongly encouraged the Cabinet Office to communicate meaningfully with the Applicant and referred the Cabinet Office to the relevant paragraphs of the Minister's PATI Practice Code.

8. 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 Monday, 6 June 2022.
9. 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 issuing an internal review decision.

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 Monday, 6 June 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 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

9 May 2022

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