

Decision Notice

Decision 15/2022: Cabinet Office

Premier's correspondence: failure to decide within statutory timeframe

Reference no: 20220425

Decision date: 18 May 2022

Summary

On 14 January 2021, the Applicant asked the Cabinet Office for any correspondence between the Premier or Acting Premier and their staff that related to the then-Director of the Molecular Diagnostic Laboratory. 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. During this review, the Cabinet Office issued an internal review decision. The Information Commissioner has not required further action in respect of this Decision.

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 25 April 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
13 January 2022	The Applicant made a written PATI request to the Cabinet Office.
14 January 2022	The Applicant revised the scope of their PATI request, in reply to the Cabinet Office's query.
	The Applicant did not receive an initial decision within six weeks of the Cabinet Office's receipt of the PATI request, i.e., by 24 February 2022.
7 March 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 18 April 2022.
25 April 2022	The Applicant requested an independent review by the Information Commissioner.
28 April 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.
11 May 2022	The Cabinet Office made submissions to the Information Commissioner, which are considered below.
17 May 2022	The Cabinet Office issued an internal review decision, dated 12 May 2022, to the Applicant.

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 7 March 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 25 April 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 28 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. In its submissions of 11 May 2022, the Cabinet Office accepted that it did not provide the Applicant with an internal review decision within the statutory timeline. The Cabinet Office apologised for not being

able to give timely attention to the PATI requests it has received and explained that the delay was due to the volume, variety and scope of those requests.

8. On 17 May 2022, the Cabinet Office provided the Applicant with an internal review decision dated 12 May 2022.
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 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.



Gitanjali S. Gutierrez
Information Commissioner
18 May 2022

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