

Decision Notice

Decision 05/2023: Cabinet Office

Fintech records: failure to decide within statutory timeframe

Reference no: 20230321

Decision date: 20 April 2023

Summary

On 18 November 2022, the Applicant asked the Cabinet Office for its records about fintech as well as the Fintech Unit. The Information Commissioner has found that the Cabinet Office failed to decide on 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 Applicant’s request for an internal review on or before **Thursday, 18 May 2023**.

Background

1. This Information Commissioner’s Decision is for a ‘failure to decide’ application for review under Part 6 of the Public Access to Information (**PATI**) Act 2010, which was received by the Information Commissioner’s Office (**ICO**) on 21 March 2023. It addresses a public authority’s basic obligation to respond to a requester’s internal review request within the statutory timeframe, not whether a public authority has properly denied access to a record.
2. In this Decision, relevant dates include:

Date	Action
18 November 2022	The Applicant made a written PATI request to the Cabinet Office.
30 December 2022	The statutory deadline passed for the Cabinet Office to issue an initial decision, i.e. within six weeks of the PATI request date.
1 February 2023	The Cabinet Office informed the Applicant that it transferred the PATI request to the Ministry of Economy and Labour Headquarters (Ministry Headquarters).
6 February 2023	The Applicant made a timely request for the Cabinet Office’s Head of Authority to conduct an internal review; such request was due within six weeks of the initial decision, transferring

	the PATI request to the Ministry Headquarters, i.e. by 15 March 2023.
20 March 2023	The statutory deadline passed for the Cabinet Office to issue an internal review decision, i.e. within six weeks of its receipt of the Applicant's request for one on 6 February 2023.
21 March 2023	The Applicant requested an independent review by the Information Commissioner.
24 March 2023	The ICO notified the Cabinet Office of this application for review and invited its comments.
27 March to 17 April 2023	The ICO received the Cabinet Office's submissions, which are considered below.
18 April 2023	The ICO received comments from the Applicant, which are considered below.

Information Commissioner's analysis and findings

Internal Review Decision

3. 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.
4. On 6 February 2023, the Applicant requested an internal review by the Cabinet Office's Head of Authority, who for purposes under the PATI Act is the Cabinet Secretary. While the Applicant's follow-up email to the Cabinet Secretary was acknowledged on 14 February 2023, the Applicant did not receive an internal review decision by 20 March 2023.
5. On 21 March 2023, the Applicant requested an independent review by the Information Commissioner of the Cabinet Office's alleged failure to issue an internal review decision.

6. On 24 March 2023, the ICO invited the Cabinet Office to make submissions on this review, as the Information Commissioner is required to do under section 47(4) of the PATI Act. Separately on 18 April 2023, the Applicant clarified for the ICO their view on where the PATI request had been ultimately transferred, given that the Ministry Headquarters had replied immediately on 1 February 2023 that their PATI request was sent to the Economic Development Department. While the Applicant outlined some information speaking to whether the Cabinet Office's transfer decision was justified, the Information Commissioner does not consider its merit in this 'failure to decide' review.
7. In the Cabinet Office's submissions to the ICO, it explained its view that the matter was no longer one requiring any other decision on its part. The Cabinet Office stated that its email of 1 February 2023, sent to both the Ministry Headquarters and the Applicant to transfer the PATI request, appeared to satisfy what the Cabinet Office was required to do under section 13(5) of the PATI Act and regulation 8 of the PATI Regulations 2014. The Cabinet Office had made the transfer because, about two years before, the Fintech Unit had been moved from the Cabinet Office's ministerial responsibility to under the Ministry Headquarters.
8. The Information Commissioner understands that, when originally handling this matter, the Cabinet Office did not accept that it had received an internal review request requiring its action, on the basis of its transfer decision. Although the Cabinet Office stated in an email to the Applicant that the Cabinet Office had no more role in this matter, the Applicant had expressly sought an internal review, using the language in section 41(c) of the PATI Act and referring to the Cabinet Office's relationship with the Fintech Unit.
9. Section 41(c) of the PATI Act allows requesters to challenge a public authority's decision to transfer their PATI request to another authority. This may include a challenge to whether the transfer was not justified because the public authority holds some responsive records, or a challenge to the public authority's alleged failure to comply with other transfer-related requirements, such as the timeframes for a transfer.¹
10. As shown in [Decision 17/2021](#), [Ministry of Education Headquarters](#), the Information Commissioner may review whether a public authority had correctly made a transfer decision. Such review would assess whether the public authority had reasonably shown that it did not hold responsive records at the time of the PATI request, before making the transfer. But that question, of whether some responsive records were held, may be

¹ The [Minister's PATI Practice Code](#) summarises the types of decisions where an internal review may be requested, at part 26.3, and recommends for public authorities to consult with requesters before formally transferring their PATI requests as part of their duty to assist, at part 16.1. For the Information Commissioner's guidance on what is required to transfer a PATI request, see [Decision 17/2021](#) at paragraphs 13-24.

independently reviewed only once the public authority issues its internal review decision under section 43 of the PATI Act², and such decision then becomes the subject of a new application for the Information Commissioner's review under section 45.

11. Further, as explained in [Decision 01/2023, Ministry of Legal Affairs and Constitutional Reform Headquarters](#), if the Information Commissioner were to annul a public authority's transfer decision under section 13(5), generally she would issue an order sending the PATI request back to the public authority to issue a fresh decision. Here, the chance remains for the Cabinet Office to ensure that reasonable efforts have been made to locate any responsive records it may hold and that those efforts are documented.
12. Since the Applicant had made their request for an internal review on time and directed it to the correct public authority, the Information Commissioner finds that their internal review request had been properly made on 6 February 2023, and the Cabinet Office's deadline was 20 March 2023.
13. 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. The Cabinet Office also may wish to consider apologising to the Applicant.

² Where a transfer decision is made by the head of a public authority, and the requester asks for an internal review of such decision, the public authority should refer that internal review request to the Information Commissioner under section 44 of 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 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 **Thursday, 18 May 2023**.

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.



Gitanjali S. Gutierrez
Information Commissioner
20 April 2023

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