

## Decision Notice

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### Decision 09/2023: Cabinet Office

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**Records on tech companies and Fastpass: failure to decide within statutory timeframe**

**Reference no: 20230607-01**

**Decision date: 21 June 2023**

## Summary

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On 23 January 2023, the Applicant asked the Cabinet Office for various records that relate to BPMS Ltd, Innofund Ltd, Innofund Innovation Incubator Ltd and the Fastpass port of entry system. 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. During this review, the Department issued an internal review decision to the Applicant. The Information Commissioner has not required further action in respect of this Decision.

## Background

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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 7 June 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
23 January 2023	The Applicant made a written PATI request to the Cabinet Office. This request revised a request previously made on 16 December 2022.
6 March 2023	The statutory deadline passed for the Cabinet Office to issue an initial decision, i.e. within six weeks of the PATI request date.
9 March 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 date the initial decision was due, i.e. by 17 April 2023.

20 April 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 9 March 2023.
7 June 2023	The Applicant requested an independent review by the Information Commissioner.
15 June 2023	The ICO notified the Cabinet Office of this application for review and invited its comments.
16 June 2023	The ICO received the Cabinet Office's submissions, which are considered below.
20 June 2023	The Cabinet Office issued an internal review decision to the Applicant.

## Information Commissioner's analysis and findings

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### *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 9 March 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. The Applicant did not receive an internal review decision by 20 April 2023.
5. On 7 June 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 15 June 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.
7. In its submissions to the ICO, the Cabinet Office acknowledged that an internal review was not conducted and there was no internal review decision issued within the statutory timeframe.

8. On 20 June 2023, the Cabinet Office issued an internal review decision to the Applicant and apologised for failing to respond in a timely manner.
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

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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 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

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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  
21 June 2023

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