

Decision Notice

Decision 13/2023: Economic Development Department

Fintech records: failure to decide within statutory timeframe

Reference no: 20230516

Decision date: 28 June 2023

Summary

On 18 November 2022, the Applicant asked the Cabinet Office for various records about fintech. The Cabinet Office transferred the request to the Economic Development Department (**Department**). The Information Commissioner has found that the Department 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 Department to comply with the requirement to issue a decision on the request for an internal review on or before **Wednesday, 26 July 2023**.

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 16 May 2023. It addresses a public authority's basic obligation 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.
1 February 2023	The PATI request was transferred to the Economic Development Department (Department).
21 March 2023	The Department issued an initial decision to the Applicant. The same day, the Applicant made a timely request for the Head of Authority to conduct an internal review; such request was due within six weeks of the date of the initial decision, i.e., by 2 May 2023.

2 May 2023	The statutory deadline passed for the Department to issue an internal review decision, i.e., within six weeks of its receipt of the Applicant's request for one on 21 March 2023.
16 May 2023	The Applicant requested an independent review by the Information Commissioner.
25 May 2023	The ICO notified the Department of this application for review and invited its comments.

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 21 March 2023, the Applicant requested an internal review by the Department's Head of Authority, who for purposes under the PATI Act is the Permanent Secretary for the Ministry of Economy and Labour. The Applicant did not receive an internal review decision by 2 May 2023.
5. On 16 May 2023, the Applicant requested an independent review by the Information Commissioner of the Department's alleged failure to issue an internal review decision.
6. By letter dated 25 May 2023, the ICO invited the Department to make submissions on this review, as the Information Commissioner is required to do under 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 Department within the statutory timeframe.
7. It is a matter of fact that the Department did not provide the Applicant with an internal review decision within the statutory timeframe. The Information Commissioner is satisfied that the Department failed to comply with section 43(2) of the PATI Act and

now orders the Department to issue an internal review decision by Wednesday, 26 July 2023. The Department also may wish to consider apologising to the Applicant.

Decision

The Information Commissioner finds that the Economic Development Department (**Department**) 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 Department 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 **Wednesday, 26 July 2023**.

Judicial Review

Should the Applicant, the Department, 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 Department 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
28 June 2023

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