

Decision Notice

Decision 48/2023: Cabinet Office

InnoFund records: failure to decide within statutory timeframe

Reference no: 2021051

Decision date: 15 December 2023

Summary

On 13 July 2023, the Applicant asked the Cabinet Office for two service agreements and a memorandum of understanding as well as the Premier’s correspondence relating to BPMS Ltd., InnoFund Ltd and the InnoFund Innovation Incubator. 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 **Friday, 2 February 2024**.

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 13 October 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
13 July 2023	The Applicant made a written PATI request to the Cabinet Office.
10 August 2023	The Cabinet Office informed the Applicant that it transferred the PATI request to the Ministry of Finance Headquarters (Ministry Headquarters).
24 August 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 5 October 2023.

5 October 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 24 August 2023.
13 October 2023	The Applicant requested an independent review by the Information Commissioner.
26 October 2023	The ICO notified the Cabinet Office 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 24 August 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 challenged whether the Cabinet Office was correct to transfer the PATI request and explained why they thought the Cabinet Office held at least some of the requested records. The Applicant did not receive an internal review decision by 5 October 2023.
5. On 13 October 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 26 October 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. The Cabinet Office did not make formal submissions to the ICO, although in discussions with the ICO in November and December 2023, the Cabinet Office stated that it was significantly impacted by the cyberattack incident and that it was seeking to balance its requirements under the PATI Act with its other existing duties.
7. As explained in [Decision 05/2023, Cabinet Office](#), section 41(c) of the PATI Act allows requesters to challenge a public authority's decision to transfer their PATI request to

another authority. Once a public authority has issued an internal review decision on the transfer, a requester may then seek an independent review of the transfer decision by the Information Commissioner. 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. For the right to an independent review to arise, however, a public authority must have issued an internal review decision.

8. As the Information Commissioner further stated in [Decision 05/2023](#), Cabinet Office, where she finds that a PATI request was not properly transferred to another public authority, ordinarily that transfer decision would be annulled and the public authority would be required to issue a fresh decision. As in that case, 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.
9. 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 24 August 2023, and the Cabinet Office's deadline was 5 October 2023.
10. 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.

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 **Friday, 2 February 2024**.

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
15 December 2023

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