

## Decision Notice

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### Decision 04/2024: Cabinet Office

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#### **Cybersecurity incident communications: failure to decide within statutory timeframe**

**Reference no:** 2024011

**Decision date:** 28 February 2024

## Summary

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On 12 October 2023, the Applicant asked the Cabinet Office for communications related to the cybersecurity incident which affected the Government information technology system in September 2023. 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 **Wednesday, 27 March 2024**.

## 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 12 February 2024. 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
12 October 2023	The Applicant made a written PATI request to the Cabinet Office, which was later amended on 13 October 2023.
23 November 2023	The statutory deadline passed for the Cabinet Office to issue an initial decision, i.e., within six weeks of the PATI request date.
29 November 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, i.e. by 4 January 2024.
10 January 2024	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 29 November 2023.

12 February 2024	The Applicant requested an independent review by the Information Commissioner.
13 February 2024	The ICO notified the Cabinet Office of this application for review and invited its comments.

## 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 29 November 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 10 January 2024.
5. On 12 February 2024, 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 13 February 2024, 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 submissions to the ICO.
7. 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

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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 (**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 **Wednesday, 27 March 2024**.

## 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.

## Enforcement

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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  
28 February 2024

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