

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No. EA/2021/0112

BETWEEN:-

CIARAN McLEAN

Appellant

-And-

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, and for the reasons set out in the attached Annex, BY CONSENT, it is ordered that:

1. The appeal is allowed and the Commissioner's Decision Notice of 30 March 2021 Ref. IC-49770-T5Q7 is substituted to record that:
 - a) The scope of the second and fourth requests required clarification. The Police Service for Northern Ireland was in breach of s.16(1) FOIA for not seeking such clarification.

- b) The scope of the second request was for any record of talks between goldmine companies discussing security costs. The Appellant's fourth request is withdrawn.
- c) The Police Service for Northern Ireland did not confirm whether information was held within the intended scope, as now clarified, of the second request.
- d) The Police Service for Northern Ireland was not entitled to rely on s.42(2) FOIA in respect of the remaining parts of the request.
- e) The Police Service for Northern Ireland is required to issue a fresh response confirming whether or not information is held within the scope of each request (with the exception of the fourth request which is withdrawn) and either disclose that information, or provide a refusal notice under s.17 FOIA. When responding the Police Service for Northern Ireland is not permitted to rely on s.42(2) FOIA, though it is not precluded from reliance on other relevant exemptions. Such response is to be provided within 28 days of the date this consent order.

ANNEX

Statement of Reasons for Consent Order

1. The Appellant wrote to the Police Service for Northern Ireland ("PSNI") on 22 May 2020 and requested information in the following terms:

"Gold producer Galantas Gold detailed plans to resumed operations and said it had reached an agreement with the Police Service of Northern Ireland to increase blasting to a commercial level at its gold mine near Omagh, Northern Ireland."

There are a number of issues arising from that statement that may assist in allowing the public [sic] understand what has taken place between the police and the miners.

1. *Have all outstanding invoices/security bills owing to the Psni/Public purse, by the goldming [sic] companies in question been resolved/paid.*

2. *Is there a public record of talks between goldmine companies discussing security costs and can the public see them?*
3. *Will the Psni confirm they have reached an agreement with Galantas Gold regarding security costs and increased blasting.*
4. *Is there a valid reason for talks being held in secret between the Goldminers and Psni given that these matters are public?*
5. *Were the community in Cavanacaw consulted by the psni about the increase of blasting and the settlement Galantas say they have reached with the Psni?*
6. *Did the Psni alert the local PCSP/Council/DFI/Planning Service about the agreement Galantas say they have reached with them and what was their reply?*
7. *Have the Psni further meetings planned with goldmining companies in West Tyrone and will community groups opposed to industrial mining in the region be notified and invited to attend?*
8. *The arrangement Galantas Gold say they have made with the Psni will cost the public purse, what will that cost be and how will that impact upon local police budgets this financial year and for the next 5 years?"*

2. The PSNI responded on 23 June 2020. It confirmed it did not hold any information within the scope of the second and fourth requests, but otherwise refused to confirm or deny holding any other information within the scope of the remaining requests. It relied on s.42(2) FOIA to do so. The Commissioner upheld that decision in Decision Notice of 30 March 2021 Ref. IC-49770-T5Q7.
3. On appeal it was noted that there was potential confusion over the intended scope of the second and fourth requests. The PSNI interpreted the second request as a request for records that were already available to the public. However the reference in the second request to "*and can the public see them*" suggested the requests were intended to capture information that was not already in the public domain. In addition the term 'secret' in the fourth request was not defined. Accordingly clarification should have been

sought pursuant to the PSNI's duty under s.16(1) FOIA to provide reasonable advice and assistance.

4. The Appellant on appeal has clarified that he intended to request any record of talks between goldmine companies discussing security costs. Accordingly the second part of the request should have read:

"Is there a record of talks between goldmine companies discussing security costs and can the public see them?"

5. The Appellant has withdrawn part 4 of the request to assist in clarifying the requests..
6. On reviewing the matter on appeal the Commissioner concluded that confirming whether or not information is held within the scope of the remaining requests to which s.42(2) FOIA had been applied would not reveal legally privileged information.