



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 30 May 2006

Public Authority: Department of the Environment (Northern Ireland)
Address: Clarence Court
10-18 Adelaide Street
Belfast

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Freedom of Information Act 2000 and in particular has failed to comply with its obligations under section 1(1)(a), section 16 and section 17 of the Act.

The Commissioner does not require any steps to be taken for the reasons set out below.

1.0 Freedom of Information Act 2000 – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner ("the Commissioner") has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 ("the Act").

1.2 Where a Complainant has made an application for a decision, unless:

- a Complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the Complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the Complainant and the Public Authority.

2.0 The Complaint

2.1 The Complainant has advised that on 5 January 2005, in accordance with section 1 of the Act, information was requested by him from the Public Authority, the Department of the Environment (Northern Ireland) ("the Department"), as follows:

"The Government has stated that it took extensive legal advice at the time Londonderry Corporation changed its name to Derry City Council in 1984. The advice sought included whether the city's name changed with the local authority name change. I would like to see the information the Government was provided with, regarding this issue. Also, I would like to view any other legal or departmental advice that was sought by the Department/Government, recently or since 1984, on the issue of the city's name or proposed name change".

2.2 On 31 January 2005, the Department advised the Complainant that *"the Department did seek legal advice on the naming of the Council"* but that the requested information *"falls within the terms of the exemption under section 35, Formulation of Government Policy and under section 42, Legal Professional Privilege"*.

The Department advised that the issue of the public interest had been considered and that *"on balance, in the wider public interest and in the interest of sound decision making, the information requested should not be disclosed"*.

The Department advised the Complainant of his right to seek a review of this decision and of his right to appeal, to the Information Commissioner, the outcome of that review.

2.3 On 1 February 2005, the Complainant confirmed that he did wish the Department to carry out an internal review. On 28 February 2005 the Department confirmed to the Complainant that an internal review had taken place and that the original decision of the Department was upheld. On 7 March 2005, the Complainant requested that the Information Commissioner review the response of the Department to his request for information.

2.4 In his request for review by the Commissioner, the Complainant asked that the Commissioner consider the decision refusing his request and the public interest issues around the use of the exemptions under section 35 and section 42 of the Act.

2.5 In his review the Commissioner has considered whether the Department has properly applied the exemptions claimed and in addition the Commissioner has considered whether the Department has complied with its obligations under section 1(1) of the Act, section 10, section 16, section 17 and the applicability of the exemptions under sections 35 and 42 of the Act.

3.0 Relevant Statutory Obligations under the Act

3.1 Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.”*

3.2 Section 10 provides that –

“(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

.....

(3) If, and to the extent that-

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied ...*

.....

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

3.3 Section 16(1) provides that –

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

3.4 Section 17 (1) provides that –

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or*
- on a claim that information is exempt information*

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,*
- (b) specifies the exemption in question, and*

(c) *states (if that would not otherwise be apparent) why the exemption applies.*"

3.5 **Section 2(2)(b)** provides that –

"In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) *in all the circumstances of the case, the public interesting in maintaining the exemption outweighs the public interest in disclosing the information."*

4.0 Review of the case

4.1 Scope of the review

In 1984, under the Change of District Name (Londonderry) Order 1984, the name of Londonderry City Council changed to Derry City Council. The Complainant, on 5 January 2005, sought from the Department the legal and/or departmental advice relating to the change of the name of the Council and relating to the possible change of the name of the corporate City.

As a result of the Commissioner's investigation further clarification as to the scope of the Complainant's request was provided by the Complainant to the Commissioner. The Department, following discussions with the Commissioner, released some of the requested information to the Complainant on 23 November 2005 and again on the 26 April 2006, including the legal advice relating to the change of name of the local council from Londonderry Corporation to Derry City Council.

In this Decision Notice the Commissioner will focus only on that information related to his request which has now been withheld from the Complainant ("the withheld information").

4.2 In relation to the withheld information, the Department has sought to rely upon the exemptions contained in sections 35 and 42 of the Act and, stating that it has had regard to the balance of the public interest, the Department has refused disclosure.

4.3 The Commissioner's Investigation

On 1 July 2005, the Commissioner wrote to the Department and requested sight of a copy of the information which formed the subject of the Complainant's request. The Commissioner also requested information to explain how the Department had reached its decision to withhold the requested information from the Complainant. This series of questions from the Commissioner had particular reference to the exemptions cited by the Department and to its consideration of the public interest in the application of these exemptions.

In addition, the Commissioner, in investigating this complaint, considered whether the refusal notice met with the requirements of section 10 and section 17 of the Act. These were not matters raised by the Complainant but the Commissioner took the view that it was appropriate to raise these issues with the Department. In particular, the Commissioner asked the Department to comment upon the time taken to respond to the request and why the refusal notice did not meet the requirements of section 17 of the Act.

In response, the Department provided the Commissioner with copies of the requested legal advice under cover of its letter of 21 July 2005. Further information was provided by the Department under cover of its letter dated 31 August 2005 and with that letter the Department's detailed response to the questions raised by the Commissioner.

The Commissioner considered whether the Department had complied with the obligations of section 16 of the Act and whether the scope of the Complainant's request had been properly considered by the Department.

- 4.3.1 Having considered the Department's response and perused the documents provided by it, the Commissioner contacted the Department to discuss the case. As a result of these discussions, the Commissioner was of the view that there was a misinterpretation of the Complainant's request by the Department. On 20 October 2005, the Commissioner sought clarification from the Complainant as to how his request for information was to be interpreted. The Complainant confirmed that his *"intention at the outset was for it to be translated as requiring legal and any other information/advice relating to the change of the Council name and the change of the City's name."*

The Department, in response to the Commissioner's intervention regarding the scope of the Complainant's request, provided to the Complainant additional information under cover of the Department's letter of 23 November 2005. On 23 December 2005 further detailed enquiries, on the application of the exemptions and the public interest factors relevant to the circumstances of the case, were put to the Department by the Commissioner. A detailed response was received in correspondence from the Department dated 6 February 2006.

- 4.3.2 The information provided by the Department to the Commissioner in the course of the Commissioner's investigations falls into the following categories:
- (i) Information held by the Department relating to legal advice on the change of name from Londonderry Corporation to Derry City Council.
 - (ii) Information relating to legal advice on the issue as to whether the City's name changed with the local authority name change.
 - (iii) Information relating to Departmental and other advice since 11 April 1984 on the issue of the change of the City's name.

The information relating to legal advice referred to at sub paragraph (i) above has now been provided to the Complainant together with some of the information relating to departmental and other advice referred to at sub-paragraph (iii). This

information is now in the public domain. The Commissioner's Decision in this instance concerns only the withheld information.

4.4 The Commissioner's Decision

4.4.1 Section 1(1)(a)

The Commissioner is of the view that the Department has failed to fulfill its obligations under section 1(1)(a) of the Act.

4.4.2 Under section 1(1)(a) of the Act any person making a request for information to a public authority is entitled to be informed in writing whether the Public Authority holds information of the description specified in the request.

4.4.3 The refusal letter sent by the Department to the Complainant does not specifically make reference to whether the information requested was held.

4.4.4 Section 10

The Commissioner is satisfied that the Department has fulfilled its obligations under section 10 of the Act for the reasons set out below.

4.4.5 Under section 10 of the Act, the obligation is to comply with the requirement of Section 1(1) promptly and no later than on the twentieth working day following the date of receipt.

In this case the Department sought to rely upon the exemptions under section 35 and 42 of the Act which are qualified exemptions and require a consideration of the public interest. Where a public authority considers that the information sought is covered by one of the qualified exemptions it is required to comply with its duties under Part 1 of the Act in "such time as is reasonable in the circumstances." Accordingly, in this instance the Department was obliged to respond to the Complainant to communicate the information in such time as was reasonable in the circumstances.

4.4.6 The Complainant made his request in writing on 5 January 2005. The Department made its response on 31 January 2005. The response of the Department, the refusal notice, was made in 17 working days from the date of receipt of the request.

4.4.7 Section 17

The Commissioner is satisfied that the Department has failed to fulfill its obligations under section 17 of the Act.

4.4.8 Under section 17(1) of the Act, where the Public Authority seeks to rely upon a claim that information is exempt information, then it must, within the appropriate

time limit, state that fact and specify the exemptions in question and state (if it would not otherwise be apparent) why the exemptions apply.

Under section 17(3) of the Act, should the Public Authority seek to rely upon a claim that section 2(2)(b) of the Act applies, then that Public Authority must state the reasons for claiming that, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 4.4.9 In its refusal notice to the Complainant dated 31 January 2005, the Department stated that the information requested fell *“within the terms of the exemption under section 35, Formulation of Government Policy and under section 42, Legal Professional Privilege”*.

The Department went on to state that *“It is in the public interest that the decisions taken by government are taken in a fully informed legal context”* and, further, that *“the exemptions applied incorporate the long established principle of non-disclosure of legally privileged documents.”*

The Department was required to state why the exemptions apply. The Commissioner finds that it did not meet the requirements of the Act in this regard.

The Department was required, by virtue of sections 17(1) and 17(3)(b) of the Act, to state the reasons for claiming that in all the circumstances of the case the public interest in maintaining the exemption outweighed the public interest in disclosing the information. The Commissioner finds that the Department did not meet the requirements of the Act in this regard.

The Department has advised the Commissioner that it did fully address these issues in its letter to the Complainant dated 28 February 2005. However, the Commissioner finds that the purpose of this letter was to advise the Complainant of the outcome of the internal review and not to provide a refusal notice as required by section 17 of the Act. The Commissioner concludes therefore that the Complainant has failed to meet the obligations imposed upon it by section 17 of the Act.

The Department has by letter dated 24 November 2005 confirmed that action had been taken within the Department to improve its practice in this area.

4.5 Section 16

The Commissioner is satisfied that the Department has failed to meet its obligations under section 16 of the Act for the following reasons:

- 4.5.1 Section 16 of the Act imposes upon the Public Authority the obligation to provide advice and assistance, so far as is reasonable, to persons who propose to make or have made requests for information to it. The Public Authority is taken to comply with this obligation if it conforms to the Code of Practice under section 45

of the Act, the Secretary of State for Constitutional Affairs' Code of Practice (the "Code").

Under the Code the Public Authority is, as far as reasonably practicable, required to provide assistance to the applicant to enable him to describe more clearly the information requested. This may include, under section 10 of the Code, "*providing an outline of the different kinds of information which might meet the terms of the request*" or "*providing a general response to the request, setting out the options for further information which could be provided on request.*"

4.5.2 On 5 January 2005 the Complainant made a written request for information as set out in paragraph 2.1 above. As a result of the intervention of the Commissioner in this case as set out at 4.3.1 above, the Complainant clarified his request.

On 14 October 2005, following discussion with the Department, the Commissioner wrote to the Department requesting that the Department commence a search for the information relating to the first part of the Complainant's request namely "*the legal advice the Government was provided with regarding the change of name from Londonderry corporation to Derry City Council in 1984...*"

In correspondence dated 19 October 2005, the Department responded to the Commissioner stating that it was the view of the Department that the Complainant sought information relating solely to whether the name of the city changed with that of the local authority, and that it was considered that "*this was the natural and logical way in which to interpret his request.*" On 20 October 2005, the Commissioner contacted the Complainant to seek to clarify his request and advised that the Department had interpreted his request as referring only to the legal advice relating to whether or not the City's name changed with the local authority name change. A further request for clarification was made to the Complainant by the Commissioner on 24 October 2005 and, as in paragraph 4.3.1 above, on 25 October 2005 the Complainant confirmed that his original intention was that a broad interpretation be taken. Following further discussions with the Commissioner certain documents were released by the Department to the Complainant.

Under section 16 of the Act a public authority is obliged to seek clarification of a request and to offer advice and assistance. The Department did not offer advice and assistance, and clarification of the Complainant's request took place only following the intervention of the Commissioner. The Commissioner notes that, in its letter of 24 November 2005, the Department acknowledges that it did not deal adequately with this issue.

4.6 Section 35 exemption

Section 35 provides that:

"(1) Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy,

(b) Ministerial communications,

(c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or

(d) the operation of any Ministerial private office.

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-

(a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or

(b) for the purposes of subsection (1)(b), as relating to Ministerial communications.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(4) In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.”

4.6.1 The Commissioner, having been provided with access to the withheld information and having fully considered the same, is of the view that the exemption under section 35(1) is engaged for the following reasons:

4.6.2 Section 35(1)(a) - Formulation or development of government policy

The Commissioner is satisfied that some of the withheld information does fall under section 35(1)(a) of the Act. The Commissioner is satisfied that some of this information relates to the formulation of government policy as it “relates to” the options available to government in relation to the name, and possible change of name, of the corporate city of Londonderry. The Commissioner is satisfied that the information is not statistical. The Department has confirmed in its submissions to the Commissioner that no decision has been made on this policy issue and the Commissioner is satisfied that this policy remains under consideration.

4.6.3 Consideration of the public interest:

The Commissioner, being satisfied that in relation to some of the withheld information the exemption under section 35(1)(a) is engaged, has considered the

public interest arguments in relation to that exemption in accordance with section 2(2)(b) of the Act set out at paragraph 3.5 above.

- 4.6.4 With respect to the exemption under section 35(1)(a), the Commissioner recognises that there are strong arguments in favour of disclosure. It is acknowledged that public participation in government cannot be meaningful without access by the public to information on how policy decisions are reached and that the disclosure of information assists in creating an environment of informed public debate. The Commissioner recognises that there is a strong public interest in the accountability of government and the Commissioner is of the view that such accountability is achieved by transparency and accessibility in relation to decisions on policy.
- 4.6.5 The Commissioner also recognises that there are strong public interest arguments in favour of maintaining the exemption. The Commissioner, having considered the Department's arguments for maintaining the exemption, accepts that the process of developing government policy on this issue has required prudence and sensitivity to differing views, opinions and traditions in Northern Ireland. The Commissioner recognises that there is a public interest in government being able to fully and freely deliberate the most politically sensitive issues and that this deliberation is assisted by the preservation of a free thinking space, where open exchange can take place and all policy positions may be considered thoroughly and without limitation.
- 4.6.6 The Commissioner considers that government policy on the question of the change of city name remained a live issue at the time of the request and accepts that the government in this instance required space to fully and freely explore all relevant policy options on such a complex and sensitive matter.
- 4.6.7 The Commissioner, having considered the competing public interest arguments in favour of maintaining the exemption and in favour of disclosing the withheld information, is satisfied that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

4.7 Section 35(1)(c) - Advice of the Law Officers

The Commissioner is satisfied that the some of the withheld information does fall under the exemption provided for in 35(1)(c) of the Act. That is because the information relates to the advice of Law Officers. The Commissioner is also satisfied that some of the withheld information relates to the advice of the Attorney General on the issue of the change of name.

Consideration of the public interest:

- 4.7.1 The Commissioner, being satisfied that in relation to some of the withheld information the exemption under section 35(1)(c) is engaged, has considered the public interest arguments in relation to that exemption. With respect to the exemption under section 35(1)(c), the Commissioner has considered the issue of

the public interest and believes that there are arguments both for maintaining the exemption and in favour of disclosing the withheld information.

- 4.7.2 This exemption deals with the provision of advice by Law Officers. This advice is sought where the legal consequences of an action by government may have repercussions in the foreign or domestic field, where there is doubt concerning the legality of legislation or administrative action or where government departments are in disagreement relating to difficult legal issues. The Commissioner accepts that the advice of Law Officers is usually treated as confidential based on a long standing convention and the 2005 Ministerial Code. Section 35(1)(c) of the Act recognises that convention.
- 4.7.3 The Commissioner recognises that there is a strong public interest in maintaining the exemption under section 35(1)(c) for the reason that should a government department anticipate that advice or information relating to advice may be revealed, it may be inhibited in seeking that advice. The Commissioner is of the view that it is in the public interest that government should be able to freely seek and to benefit from such advice and that government should not be inhibited from seeking such advice. The Commissioner is satisfied that there is uncertainty as to the legal position on the issue of the change of the City's name, uncertainty which can be resolved only by a ruling of the Court. The Commissioner is satisfied that to release information relating to the advice of the Law Officers on this issue in advance of such a resolution would be likely to inhibit the relevant parties in defending or asserting their respective legal positions.
- 4.7.4 The Commissioner is of the view that there are public interest arguments in favour of disclosure of the withheld information. The Commissioner recognises that proper public debate cannot take place without wide availability of all relevant information. The Commissioner recognises that views and representations which influence the legislative process should be open to public scrutiny and that the public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue which is the subject of current public debate. The Commissioner is cognisant of the fact that public debate on the issue of the change of City's name was current at the time of the Complainant's request and remains current.
- 4.7.5 The Commissioner (having considered the advice which falls within this exemption) is satisfied that certain aspects of the advice from the Law Officers may also be subject to legal professional privilege. The public interest arguments in favour of maintaining the legal professional privilege exemption and in favour of disclosure are discussed further at paragraphs 4.13 and 4.14 below.
- 4.7.6 The Commissioner is mindful that at the time of the Complainant's request there was uncertainty over the legal position regarding the change of the City's name and that the government's ability to obtain legal advice, in order to properly assess its position on this issue, would be inhibited by disclosure of that advice. For that reason, the Commissioner is satisfied that the public interest in maintaining the section 35(1)(c) exemption outweighs the public interest in disclosing the withheld information.

4.8 Section 42 exemption

4.8.1 Section 42 provides that:

“42. – (1) Information in which a claim to legal professional privilege or, in Scotland, to confidentiality of communication could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.”

4.8.2 The Commissioner is satisfied that some of the withheld information, which is contained within documents provided to the Commissioner by the Department does fall under section 42 of the Act. The Commissioner has carefully examined this information which comprises confidential communications between the Department and its legal advisors including the opinions of Senior Counsel and some of which includes legal advice on the issue as to whether the City’s name changed with the local authority name change in 1984. The Commissioner is satisfied that this advice is subject to legal advice privilege.

4.8.3 In determining whether legal professional privilege continues to apply to this withheld information, the Commissioner has carefully considered whether the Department had waived legal professional privilege at the time of the request by any known disclosure by the Department. The Commissioner is aware that aspects of the legal advice provided to it entered the public domain by virtue of evidence given by the Minister to the Environment Committee of the Northern Ireland Assembly. Having considered the legal advice that has been withheld by the Department, the Commissioner is satisfied that the legal advice privilege has not been waived in respect of that information.

4.8.4 Consideration of the public interest:

The provisions of section 2(2) (b) are set out at paragraph 3.5 above.

The Commissioner, being satisfied that in relation to some of the withheld information the exemption under section 42 is engaged, has considered the public interest arguments in relation to that exemption.

4.8.5 The Commissioner has considered the issue of the public interest and considers that there are arguments both for maintaining the exemption and in favour of disclosing the withheld information.

The Commissioner recognises that, in order to promote accountability, there is an inherent public interest in the transparency of the decision making of public

authorities. There is a strong argument that such transparency will improve the quality of future decisions.

The Commissioner recognises that there is a strong public interest in disclosing information where to do so would determine whether public authorities have acted appropriately and it is in the public interest to disclose information where such disclosure will improve understanding of, and participation in, public debate of important issues of the day.

- 4.8.6 The Commissioner considers that there is also a strong public interest in the protection of the established principle of legal professional privilege. This principle allows clients to confidently seek legal advice and allows for full and frank exchange between advisor and client.

The Commissioner recognises that it is vital that, in the particular circumstances of this case, government and ministers are able to obtain full and frank legal advice on this sensitive issue. The Commissioner is mindful that at the time of the Complainant's request legal proceedings to resolve the issue of the change of City name were considered and it was therefore vital that the government was able to obtain legal advice free from the scrutiny of other parties to those proceedings. As legal advice must be fair, frank and reasoned, the Commissioner recognises that it will invariably highlight the strengths and weaknesses of alternative proposals. The Commissioner accepts that if such advice was to be routinely disclosed, public authorities may be reluctant to seek advice for fear of damaging their position in relation to future matters. The Commissioner considers that such an outcome would be contrary to the public interest.

- 4.8.7 The Commissioner recognises that what is in the public interest is that which serves the public good. The Commissioner, having regard to all the circumstances of this case, is satisfied that legal advice was sought by the Department for a specific and legitimate purpose. The Commissioner is of the view that the issue before the Department was of some considerable political sensitivity and the legal advice provided to the Department was critical in informing it as to the impact of the 1984 Order on the change of name of the City.

- 4.8.8 In giving full consideration to the public interest in this case the Commissioner has had regard to the view of the Information Tribunal as expressed in matter of *Bellamy v The Information Commissioner* (Appeal Number EA/2005/0023). At paragraph 35 of that judgment the Tribunal commented as follows:

"As can be seen from the citation of the legal authorities regarding legal professional privilege, there is a strong element of public interest inbuilt into the privilege itself. At least equally strong counter-vailing considerations would need to be adduced to override that inbuilt public interest. It may well be that in certain cases, of which this might be one were the matter not still live, for example where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight Nonetheless, it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case, of which this case is not one."

4.8.9 The Commissioner is not satisfied that in the present case particular weight should be given to the public interest favouring disclosure. The Commissioner is mindful of the fact that at the time of the request there was a public interest in the Department and the government protecting their position in the event of legal proceedings to resolve the issue of the change of the City's name. The Commissioner recognises the strong public interest in protecting the established principle of legal professional privilege. For all of these reasons, the Commissioner is satisfied that in all the circumstances of the case the public interest in maintaining the exemption does outweigh the public interest in disclosure of the withheld information.

4.8.10 In conclusion, the Commissioner is satisfied that the withheld information is exempt information in the context of each of the qualified exemptions cited and that the public interest in favour of maintaining each of the exemptions outweighs the public interest in favour of disclosure.

5.0 The Commissioner's Decision

5.1 The Commissioner's decision in this matter is that the Department has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1)(a) – in that it failed to inform the Complainant in writing whether it held information of the description specified in the his request.

Section 16 – in that it failed to offer the Complainant advice and assistance to enable him to describe more clearly the information requested and clarify the nature of the information sought.

Section 17(1)(c) – in that it refused the Complainant's request for information but when communicating this to the Complainant failed to state, where it was not otherwise apparent, why the exemption being relied upon to refuse the request for information applied.

Section 17(3)(b) – in that it refused the Complainant's request for information but when communicating this to the Complainant failed to state the reasons for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

6.0 Action Required

6.1 The Commissioner finds that the Department failed to comply with the requirements of section 1(1)(a) of the Act, as set out at paragraph 4.4.1 above,

- 6.2 The Commissioner finds that the Department failed to comply with the requirements of section 17 of the Act, as set out at paragraphs 4.4.3 and 4.4.7 above.
- 6.3 The Commissioner finds that the Department failed to comply with the requirements of section 16 of the Act, as set out at paragraph 4.5 above.
- 6.4 The Department has acknowledged its failure to comply with its obligations under the Act and, in response to the intervention of the Commissioner, has released all that information requested by the Complainant which initially was wrongly withheld. During the course of the investigation of this complaint, the Department has confirmed to the Commissioner that it will comply with the requirements of section 17 of the Act in relation to future requests. Therefore the Commissioner is satisfied that no further action is required by the Department in relation to this complaint.
- 6.5 However, in light of the findings outlined above the Commissioner will continue to monitor the future compliance of the Department with the Act and the Code.

7.0 Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Web: www.informationtribunal.gov.uk
Email: informationtribunal@dca.gsi.gov.uk

- 7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 30th day of May 2006

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner
Wycliffe House
Water Lane Wilmslow Cheshire SK9 5AF**