

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 29 November 2006

**Public Authority:** Department of Finance and Personnel Northern Ireland  
**Address:** Rathgael House  
Balloo Road  
Bangor BT19 7NA

### Summary Decision

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1. The complainant requested information from the Department of Finance and Personnel Northern Ireland (the "Department") relating to the work sample test for a promotion competition. The Department withheld the information, relying on the exemptions under sections 36(2)(c) and 29(1)(b) of the Freedom of Information Act 2000 ("the Act"). The Commissioner is satisfied that the requested information is exempt under section 36(2)(c) of the Act. The Commissioner does not therefore require the Department to take any further steps in relation to the complainant's request.

### The Commissioner's Role

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2. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

### The Request

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3. The complainant has advised that on 26 October 2005 he requested the following information from the Department:

"I would request the following in relation to the recent work sample test for the EO2/C promotion competition:

- (A) A list of all the questions in the test along with the answers accepted as being accurate.
- (B) The rationale behind why each individual answer was deemed to be correct".

4. The complainant had originally requested this information on 27 September 2005 from the Department of Agriculture and Rural Development Northern Ireland, who

- advised the complainant on 21 October 2005 that it did not hold the information, and transferred the request to the Department on 26 October 2005.
5. On 23 November 2005 the Department confirmed to the complainant that it did hold the information he had requested. The Department further advised that in relation to part A of his request it was withholding the work sample test and answer sheet containing the correct answers (the “withheld information”) in reliance on the exemption under section 36(2)(c) of the Act.
  6. Section 36(2)(c) provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would prejudice, or be likely to prejudice, the effective conduct of public affairs. The “qualified person” is set out in section 36(5) of the Act, and in the case of the Department the qualified person is the Minister in charge of the Department. At the time of the complainant’s request the relevant Minister was Lord Rooker MP, and the Department advised the complainant that Lord Rooker was of the opinion that the exemption ought to be applied and the information withheld.
  7. In relation to part B of the complainant’s request, the Department provided an explanation of why the Department considered the answers to be correct, and information on how the test questions and answers were developed and validated.
  8. The complainant requested an internal review of the Department’s decision not to disclose the withheld information on 6 January 2006. The Department responded on 13 January 2006, advising that it upheld its original decision to rely on the exemption under section 36(2)(c). In addition the internal reviewer considered the withheld information to be exempt under section 29(1)(b) of the Act (prejudice to the financial interests of any administration in the UK).

## **The Investigation**

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### **Scope of the case**

9. On 8 March 2006 the complainant asked the Commissioner to consider whether or not the Department had acted correctly in refusing to disclose the withheld information.

### **Chronology of the case**

10. The Commissioner wrote to the Department on 11 October 2006, requesting a copy of the withheld information. With regard to the section 36(2)(c) exemption, the Commissioner noted the Department’s assertion that the “qualified person”, in this case Lord Rooker, was of the opinion that “certain forms of adverse effect on the effective conduct of public affairs would or would be likely to follow if the work sample test and answer sheet containing the correct answers were disclosed”.

11. The Commissioner asked the Department to provide documentary evidence of Lord Rooker's opinion, including:
- i) The date the request was put to Lord Rooker.
  - ii) The nature of this request.
  - iii) Lord Rooker's agreement as the qualified person referring to the request.

The Commissioner also asked the Department to provide full details of the public interest test carried out by the Department, identifying how the Department balanced the arguments for and against maintaining the exemption in this case.

12. In addition, the Commissioner asked the Department to clarify why the section 29(1)(b) exemption had been applied at the internal review stage. The Commissioner noted that Section 29(1)(b) relates to information which is exempt because its disclosure would, or would be likely to, prejudice the financial interests of any administration in the UK. In this instance it appeared that the Department was claiming that disclosure of the questions and answers to the EO2 promotion competition would prejudice the financial interests of the Executive Committee of the Northern Ireland Assembly, as an administration in the UK. The Commissioner therefore asked the Department to clarify its reliance on this exemption, including details of the prejudice anticipated.
13. The Department responded to the Commissioner on 8 November 2006, and provided a copy of withheld information. The Department advised the Commissioner that the section 29(1)(b) exemption had been applied at the internal review stage as a result of the reviewer considering all aspects of the request afresh.
14. **Section 36(2)(c)**  
In relation to the Department's reliance on the section 36(2)(c) exemption, the Department provided the Commissioner with a memorandum dated 18 October 2005 from the Department's Head of Appointments Division to Lord Rooker in relation to the complainant's request. This document outlined clearly the nature of the request and explained in detail why the Department considered the information to be exempt, providing details of the public interest test conducted. The document was marked "agreed" and signed by Lord Rooker, dated 19 October 2005.
15. **Section 29(1)(b)**  
With regard to the section 29(1)(b) exemption, the Department advised the Commissioner of its view that anything which affected the financial interests of government departments would also have an impact on the financial interests of the Executive Committee. The Department explained its view that if the withheld information were to be disclosed, new questions would need to be developed, which would incur additional expenditure, thus causing prejudice to the financial interests of the Executive Committee.
16. **Public interest test**  
The Department advised that a significant amount of money was spent on developing the promotion test, in the expectation that the test could be reused in

subsequent competitions. If the test could not be reused, the Department would incur further costs to develop new questions, thus reducing the cost-effectiveness of the exercise.

17. The Department further asserted that disclosure of the questions and answers would negate the general effectiveness of the exam, as it was designed to assess candidates by means of an unseen test. In the Department's view, if all candidates had access to the questions, and especially the answers, it would be more difficult to distinguish between candidates on the basis of ability.

## Analysis

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### Exemptions

18. The issue in this case for the Commissioner to determine is whether the Department acted correctly in applying the section 36 and section 29 exemptions to the withheld information.

#### **Section 36(2)(c): Information likely to prejudice the effective conduct of public affairs**

19. For this exemption to be engaged, the Commissioner first needs to be satisfied that the exemption has been applied by a qualified person expressing a reasonable opinion. The exemption is also a qualified exemption and therefore subject to the public interest test.

#### **The reasonable opinion of a qualified person**

20. The exemption under section 36 of the Act is only engaged if applied by the "qualified person". Section 36(5)(b) states that the qualified person in relation to information held by a Northern Ireland department is the Northern Ireland Minister in charge of the department. During suspension of the Northern Ireland Assembly, the UK Government Minister in charge of the Department of Finance and Personnel was Lord Rooker at the time of the complainant's request. Therefore the Commissioner is satisfied that the person making the decision in this case was the qualified person as required by the Act.
21. The Commissioner also needs to be satisfied that the qualified person has expressed a reasonable opinion. A reasonable opinion can be defined as one that, given the circumstances of the case, could be said to fall within a range of acceptable responses and be considered neither outrageous nor absurd. The Commissioner is satisfied given the nature and content of the withheld information that the opinion of the qualified person that the information should not be released was a reasonable one in all the circumstances.
22. For the reasons set out above, the Commissioner is satisfied that the exemption under section 36(2)(c) is engaged.

## Public Interest Test

23. The public interest test as set out at section 2(2)(b) of the Act requires the Department to consider whether in all the circumstances of this particular case, the public interest in maintaining the exemption outweighed the public interest in disclosing the withheld information.
24. The Department advised the Commissioner that it did consider arguments for and against release of this information. The Department acknowledged its duty to act in an open and transparent manner. However, the Department argued to the Commissioner that disclosure of the exam questions and answers would effectively defeat its purpose as an unseen test.
25. The Department also advised the Commissioner that development of this set of questions was carried out by external consultants, at a considerable cost. The Commissioner notes that only one set of questions were developed, which means the Department could not use alternative questions, were these exam questions to be put into the public domain. The Commissioner recognises that there is a strong public interest in the public being informed that public money is being effectively spent. However, the Commissioner considers the fact that the Department only holds one set of questions is not in itself a public interest factor in this case.
26. The Commissioner is mindful of the fact that exams, whether academic, professional or vocational, are designed to test a candidate's skills and knowledge under pressure. Were a candidate to have advance knowledge of the questions, he or she would not be subject to the same degree of challenge in testing skills and abilities, and the exam would be less effective in this regard. The Commissioner accepts that candidates need to be able to prepare for such exams, but notes that the Department in this case did provide the complainant with a set of sample questions for this purpose.
27. The Commissioner notes the complainant's view that individuals who sit the exam more than once may have an advantage over others. Having had sight of the withheld information, the Commissioner is of the view that any advantage would be minimal, since there are a number of questions, and these take the format of a paragraph of text followed by a multiple choice question. It would be difficult to memorise the questions, especially if a period of time passed between exam sittings. However, memorising the answers, if they were disclosed, would be much easier because of the multiple choice format. In light of the above, the Commissioner accepts that placing the questions and answers in the public domain would serve to frustrate the purpose of the exam, which is to assess candidates' abilities. If the exam questions and answers were to be placed in the public domain, more candidates would be likely to gain higher marks, and the Department would need to find other ways of selecting candidates.
28. The Commissioner is mindful that there is a presumption of openness running through the Act, and if the public interest test is evenly balanced, the public interest favours disclosure. However, in light of the above, the Commissioner is of the view that the argument for maintaining the exemption in this case is

considerably stronger than the opposing arguments for disclosure of the information requested. Although it is important for public authorities to be accountable, open and transparent with regard to their recruitment and selection processes, it is clear that these processes must be fair and effective. The Commissioner is satisfied that disclosure of the withheld information (the exam questions and answers) would have an adverse impact on the Department's recruitment processes, which outweighs the public interest in disclosure in this case.

**Section 29(1)(b): Information likely to prejudice the financial interests of any administration in the United Kingdom**

29. The Commissioner notes that the Department sought to rely on section 29(1)(b) in relation to the withheld information. As the Commissioner is satisfied that the information is exempt by virtue of section 36(2)(c) he is not required to make a decision relating to the Department's application of the section 29(1)(b) exemption in this case.
30. However the Commissioner did investigate thoroughly all the exemptions claimed by the Department, and is of the view that it is unlikely that the section 29(1)(b) exemption would be engaged, since the Department has not provided sufficient evidence that the financial interests of the Northern Ireland Executive would or would be likely to be prejudiced by disclosure of the withheld information.

## The Decision

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31. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## Steps Required

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32. In view of his decision on the application of the section 36(2)(c) exemption in this case, the Commissioner does not require any steps to be taken.

## Right of Appeal

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33. Either party has the right to appeal against this Decision Notice to the Information 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

Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 29<sup>th</sup> day of November 2006**

**Signed .....**

**Marie Anderson  
Assistant Commissioner (Northern Ireland)**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF**

## Legal Annex: Relevant statutory obligations

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1. **Section 1(1)** provides that:

(1) 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.

2. **Section 36(1) and (2)** provide that:

(1) This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
  - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

3. **Section 29(1)** provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the economic interests of the United Kingdom or of any part of the United Kingdom, or
- (b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).