

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 5 March 2007

Public Authority: Northern Ireland Office
Address: Stormont Castle
Belfast
BT4 3TT

Summary

The complainant made three requests by email to the Northern Ireland Office (the NIO) on 14, 15 and 22 August 2006. He received no response, and contacted the NIO again on 11 October 2006. The NIO acknowledged the complainant's email of 11 October 2006 and advised that it would respond to his requests. The NIO provided the complainant with the information he requested in relation to two of the three requests on 30 October 2006 and 10 January 2007, but failed to provide the complainant either with the information he requested, or a refusal notice, in relation to the other request. The Commissioner therefore requires the NIO to provide a response to the complainant in relation to the outstanding request.

The Commissioner's Role

1. The Commissioner's duty 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Requests

2. The complainant has advised that on 14, 15 and 22 August 2006 he requested the following information by email from the NIO in accordance with section 1 of the Act:

i) 14 August

"Details of all equipment lost at NI government departments for each of the last five years, including details of item lost, department, date, position of person who lost it and value."

ii) 15 August

"1. Details of all expense claims made by Peter Hain during his time as

Secretary of State.

2. Details of all refurbishments made to the Secretary of State's official residence in Northern Ireland since 1996 with details of the refurbishment, who requested it be made, the serving Secretary of State, cost of refurbishment and date carried out.
3. The annual cost to the taxpayer of the Secretary of State's official residence for each of the last ten years."

iii) 22 August

"A list of all official entertainment by Peter Hain, since he became Secretary of State for Northern Ireland, with details of who his guests were, cost, date, location, function, and any other data in relation to the entertainment held by the NIO."

3. The complainant did not receive a response to any of these requests, and he emailed the NIO again on 11 October.
4. The NIO replied to the complainant on 11 October, advising him that it had not received any of his previous emails. The NIO asked the complainant whether he had any proof that the requests were in fact sent to the NIO.
5. The complainant responded to the NIO on 12 October. He advised that he did have a record of the requests being sent by email to the NIO, and indicated that none of the emails had been returned to him as undeliverable. The complainant expressed concern that these particular emails had been lost, as he had used this email address to contact the NIO on previous occasions without experiencing any problems.
6. The NIO emailed the complainant on 12 October to advise that his requests of 14, 15 and 22 August did not reach the NIO inbox. The NIO advised that it would treat the complainant's email of 11 October as a fresh request, combining the three previous requests.
7. The NIO subsequently sent three letters of acknowledgement to the complainant on 13 October, relating to his request of 11 October. The NIO advised that it would endeavour to respond to his request within the timescales stipulated by the Act.
8. The NIO provided a partial response to the complainant on 30 October. This comprised the information he requested on 14 August.
9. The complainant did not receive any further response from the NIO, and he contacted it on 28 November to ask when he could expect to receive a response to his two outstanding requests. The complainant did not receive any response to this email.

The Investigation

Scope of the case

10. On 5 December 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The NIO's assertion that it did not receive the complainant's three emails of 14, 15 and 22 August
 - The NIO's failure to respond to the complainant regarding his requests of 15 and 22 August within twenty working days of his combined request of 11 October

Chronology

11. The Commissioner contacted the NIO by telephone on 13 December 2006 and followed this by letter on 15 December 2006 to remind it of its obligations under section 1, section 10 and section 17 of the Act. The Commissioner advised the NIO that section 10 in particular requires a public authority to respond to an information request promptly, and in any event not later than twenty working days after the date the request is received.
12. The Commissioner noted that the NIO had been in receipt of the complainant's requests since 11 October at the latest, which meant it had had at least two months to deal with the requests in compliance with the Act. The Commissioner asked the NIO to comment on its assertion that it did not receive the complainant's emails of 14, 15 and 22 August in the light of the fact that he had sent other emails to the same NIO email address, which were received by the NIO.
13. The Commissioner also asked the NIO to comply with section 1(1) of the Act by providing the complainant with a full response to his combined request of 11 October. The Commissioner indicated to the NIO that if it did not provide the complainant with an appropriate response by 5 January 2007, he would be minded to serve a Decision Notice in the case and formally require the NIO to comply with its obligations under the Act.
14. The NIO contacted the Commissioner by telephone on 5 January 2007 to indicate that the complainant would shortly receive a response to his requests. The NIO explained that it had needed to consult with other departments before releasing any information. The Commissioner reminded the NIO that in any event it had breached section 10 of the Act, and to date it had still not provided the complainant with a response to two of his requests. Therefore the Commissioner was of the view that it would be right in the circumstances to provide a formal record of this breach.

15. The NIO wrote to the Commissioner by letter dated 7 January 2007 to advise that the complainant's emails of 14, 15 and 22 August 2006 may have been classified as spam by the NIO security systems. The NIO did not provide any explanation as to why it was able to receive other emails from the complainant which had been sent to the same email address.
16. The NIO advised the Commissioner that the NIO website has a designated FOI section which allows anyone to submit a request online, without having to send a separate email. The NIO had also suggested to the complainant on 11 October 2006 that if he did not receive acknowledgement to future emails within two working days, he may wish to contact the NIO to confirm receipt.
17. The NIO also advised the Commissioner that it had spoken to the complainant on a number of occasions and explained the progress of his requests. The NIO indicated to the Commissioner that it would respond to the complainant's outstanding requests during the week commencing 8 January 2007.
18. The complainant advised the Commissioner on 10 January 2007 that he had now received a response from the NIO in relation to the request he made on 15 August 2006. The complainant confirmed that he had still not received a response to his request of 22 August 2006.
19. The Commissioner emailed the NIO on 10 January 2007 to ask when a response would be made to the complainant's request of 22 August 2006. The Commissioner did not receive a response to this correspondence.
20. The Commissioner wrote to the NIO on 30 January, advising that he had received further complaints from this complainant regarding unanswered requests made to the NIO. These further complaints do not form part of the original complaint, and are not addressed in this decision notice. The Commissioner again asked the NIO when it would respond to the complainant's outstanding request. No response was received from the NIO.

Analysis

21. The Commissioner has considered the issue of whether or not the NIO received the complainant's emails of 14, 15 and 22 August 2006. The complainant has provided evidence that the emails were sent to the NIO email address. The NIO has suggested that these emails might have been classified as spam, although this does not account for the fact that the complainant did send other emails to the NIO email address which were received. The Commissioner is of the view that there is insufficient evidence for him to decide whether or not the NIO did in fact receive the three emails.
22. In light of the above, the Commissioner is minded to accept 11 October 2006 as the date the NIO received the three requests from the complainant.

23. In order to comply with section 10(1) of the Act, the NIO ought to have responded to the complainant promptly, and in any event not later than twenty working days following the date of receipt. In this particular case the NIO ought to have responded by 9 November 2006.

The Decision

24. The Commissioner's decision in this case relates to the information requested by the complainant on 14, 15 and 22 August 2006, which was combined and treated as a fresh request by the NIO on 11 October 2006.
25. As the NIO has not to date provided the complainant either with the information he requested, or a refusal notice, in relation to the outstanding request of 22 August, the Commissioner's decision is that the NIO has failed to comply with section 1 of the Act.
26. The Commissioner is also satisfied that the NIO did not comply with section 10 of the Act in relation to the complainant's requests of 14 and 15 August, in that it failed to respond to the complainant within the time limit set out in section 10 of the Act.

Steps Required

27. The Commissioner requires the public authority either to confirm or deny that the outstanding information requested on 11 October is held by it and to communicate that information to the complainant, or, if the information is exempt information, to give the complainant a refusal notice in accordance with section 17 of the Act.
28. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

29. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

30. 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

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 5th day of March 2007

Signed

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

Relevant statutory obligations

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 10** provides that:

- (1) ... 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. **Section 17** provides that:

- (1) 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.