

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 14 December 2009

**Public Authority:** Department of the Environment (Northern Ireland)  
**Address:** 10-18 Adelaide Street  
Belfast  
BT2 8GB

### Summary

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The complainant, on 9 September 2005, requested from the Planning Service, an executive agency within the Department of the Environment (Northern Ireland) ("the Department"), a copy of an enforcement officer's report. The Department confirmed that prior to the request it had, in error, destroyed the requested information.

The Commissioner is satisfied that the requested information is not held by the Department as the information was destroyed by the Department in error. Accordingly, the Commissioner does not require the Department to take any steps in relation to this request.

### The Commissioner's Role

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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. Legislation relevant to this complaint is set out in full in the Legal Annex to this Notice.

### Request

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2. On 8 April 2005 the complainant asked the Department for information relating to the Department's decision not to take enforcement action regarding the modification of a dwelling. The complainant wrote:

*"Can you tell me why it is not suitable for the department to take further action? Can you tell me what legislation in Northern Ireland covers planning?"*

3. On 23 May 2005 the Department responded to the complainant. The Department provided the complainant with details of the primary planning legislation in force in

Northern Ireland. The Department advised the complainant that an enforcement officer from the Department had inspected the site in question and judged that the modification to the dwelling at issue was acceptable in planning terms and that no enforcement action was appropriate. The Department also advised that senior planning officers with responsibility for enforcement who agreed that no action should be taken.

4. On 9 September 2005 the complainant requested “a copy of your enforcement officer’s report regarding this matter.”

5. The Department acknowledged receipt of the request on 14 September 2005. On 6 October 2005 the Department provided its substantive response to the complainant’s request for information:

*“...following a search of our paper and electronic records, I have established that the information you requested was, prior to the receipt of your request, destroyed in accordance with the Agency’s Disposal of Records Schedules under the Public Records Act (NI) 1923.”*

6. On 9 October 2005 the complainant asked the Department for clarification on the Agency’s Disposal of records schedules. The Department acknowledged receipt of this letter on 17 October 2005.

7. The complainant wrote to the Department on 14 December 2005 to advise that he had not yet received any substantive response to his enquiry of 9 October 2005.

8. On 28 December 2005 following receipt of this reminder the Department directed the complainant to the disposal schedules for its records published on its website.

9. On 11 January 2006 the complainant contacted the Department alerting the Department to his concern that the requested information had not been dealt with appropriately. The Commissioner is satisfied that this letter constitutes the complainant’s request for an internal review

10. On 12 February 2006 the Department wrote to the complainant apologising for the destruction of the requested information. The Department advised:

*“...this information was destroyed when the case was closed. When this file was destroyed I was following out procedures regarding the disposal of enforcement files as per a schedule dated 24<sup>th</sup> November 2003. I have enclosed a copy of those procedures for you [sic] information. On the 1<sup>st</sup> February 2004 the agency reviewed its disposal register. The new register states that enforcement files should be held for 10 years, this includes complaint files. I now realise that I was wrong to destroy your file and I apologise to you for this.”*

11. The Department also advised that the case officer who had inspected the site in question was prepared to meet with the complainant on site and to advise the

- complainant in person why the Department had decide that it was not appropriate to take enforcement action in this matter.
12. On 17 February 2006 the complainant made a further complaint to the Department regarding the manner in which it had handled his request for information.
  13. This letter was acknowledged by the department on 30 June 2006. On 17 January 2007 the complainant again wrote to the Department advising that he had not yet received a substantive response to his letter of 30 June 2006.
  14. Following this reminder the complainant received a letter from the Department dated "*January 2007*" which advised that his letter had been passed to the Department's Departmental Information manager.
  15. On 11 June 2007 the complainant again wrote to the Department expressing his concern that he had not yet received a response for the Department.
  16. The Department replied to this letter on 20 June 2007 advising the complainant that "*the Planning Service has no direct involvement in the matter. I have again passed your letter to ... .. the Director for Corporate Services and... .. the departmental information manager, as they have responsibility for responding to your complaint.*"
  17. On 2 July 2007 the Department wrote to the complainant advising:

*"it would appear that papers relating to your complaint have been destroyed at some point earlier than should have been the case had the documents been destroyed in accordance with the officially approved retention and disposal schedule."*
  18. On 12 September 2007 the complainant referred the matter to the Commissioner.

## Investigation & Decision

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19. On 28 February 2008 the Commissioner wrote to the Department.
20. The Commissioner asked the Department for an explanation as to why the Department did not correspond further with the complainant providing him with evidence of the destruction of the requested information and an explanation as to why incorrect procedures had been followed leading to the premature destruction of the requested information.
21. The Commissioner also asked the Department whether any other files were erroneously destroyed under this policy.
22. The Commissioner also asked the Department:

- Whether any further information relating to the complainant's request had ever been held by the Department or by any other person on behalf of the Department. If so, what was this information? What was the date of its creation and deletion?
  - To provide a record of any such deletion and a copy of the Department's records management policy in relation to such deletions.
  - Whether there was any reason why any such information, if ever held, may be concealed.
23. On 29 October 2008, following further reminders from the Commissioner, the Department responded to the Commissioner's letter of 28 February 2008.
24. The Department confirmed that the requested information was destroyed earlier than should have been the case had the documents been destroyed in accordance with the officially approved retention and disposal schedule.
25. The Department confirmed that it was not aware of any other information requested by any party which had been unavailable through inadvertent early destruction.
26. The Department advised that, as the file in question had been destroyed, it was not possible to state whether or not there had been any other documentation held by the Department in relation to the complainant's request or the planning issue in question. However the Department could state that, as the complaint was specific to a particular planning application, there was no reason why any other relevant or related record would be held by any other person within, or on behalf of, the Department.
27. Following his investigations the Commissioner is satisfied that no information relevant to the complainant's request is now held by, or on behalf of, the Department. This is because the requested information was destroyed by the Department in error.

## Steps Required

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28. The Commissioner requires no steps to be taken.

## Other matters

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29. Although not part of this Decision Notice the Commissioner wishes to express his concern at the Department's inadvertent disposal of the requested information. The Commissioner expects that, in future, the Department will manage its records in accordance with its retention and disposal schedule and that it will observe the recommendations of the code of practice issued under section 46 of the Act.

## Right of Appeal

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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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)  
Website: <http://www.informationtribunal.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 14<sup>th</sup> day of December 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### General Right to Access

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.”

### Time for compliance with request

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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) 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, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(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.