

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 June 2010

Public Authority: The Police Service of Northern Ireland
Address: 65 Knock Road
Belfast
BT5 6LE

Summary

The complainant requested information held by the Police Service of Northern Ireland (the PSNI) relating to the Smithwick Tribunal. The PSNI refused to disclose the information and cited sections 23(1)(a) and (b), section 24, section 27(1) and 27(2), section 30(1)(a), (b) and (c), section 31(1), (a), (b) and (c), section 36(2)(b)(i) and (ii), section 36(2)(c), 38(1)(a) and (b), section 40, section 41(1)(a) and (b), and section 42(1). The Commissioner is satisfied that section 23 applies to some of the withheld information and 27(1)(a) applies to all of the remaining information and that the public interest in favour of maintaining the exemption outweighs the public interest in favour of disclosing the information. The Commissioner also found a number of procedural breaches in relation to the PSNI's handling of the 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.

Background

2. The Smithwick Tribunal was established to examine the murders of two members of the then Royal Ulster Constabulary (the RUC, the Northern

- Ireland police force which later became the PSNI). On 20 March 1989 RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan travelled to Dundalk Garda Station, in the Republic of Ireland, for a meeting with a Senior Garda Officer. The RUC officers were murdered as they returned to Northern Ireland after the meeting, and the Provisional IRA subsequently claimed responsibility for these murders.
3. In 2001 the British and Irish Governments appointed Peter Cory, a retired Canadian Supreme Court Judge, to investigate and to report into allegations of collusion between Irish and British security forces and paramilitaries in six instances, including the murders of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan. Judge Cory's appointment arose from the Weston Park Agreement in August 2000 where the Irish and British Governments undertook to appoint a Judge of international standing to carry out such an investigation. The two Governments also undertook that in the event that a public inquiry was recommended, such an inquiry should be established.
 4. Judge Cory produced a report in relation to each case he was asked to consider. In relation to the murders of Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan, Judge Cory recommended that there should be a public inquiry to be conducted by an independent Tribunal.
 5. The Tribunal was established by Resolutions passed by Dáil Éireann¹ and Seanad Éireann² on 23 and 24 March 2005 respectively, and by Instrument entitled Tribunals of Inquiry Evidence Act 1921 (Establishment of Tribunal) Instrument 2005. The sole member of the Tribunal is His Honour Mr Justice Smithwick.
 6. The function of the Smithwick Tribunal is to ascertain whether or not there is evidence that there was collusion between a member or members of An Garda Síochána³ or other employees of the State and paramilitaries in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989.
 7. At the date of issuing this Notice, the Smithwick Tribunal was scheduled to commence public hearings in October 2010.

¹ Lower house of the Irish Parliament

² Upper house of the Irish Parliament

³ Irish Police

The Request

8. The Commissioner notes that the complainant submitted the same request to the PSNI and to two other public authorities, namely the Northern Ireland Office⁴ (the NIO) and the Ministry of Defence⁵ (the MOD). The Commissioner has issued Decision Notices in relation to each public authority separately, and the Decision Notice in this case relates only to the PSNI.
9. On 18 January 2007 the complainant submitted a request to the PSNI under section 1(1) of the Act:

“Under the Act, I would like to access all documents held by the PSNI in relation to an inquiry which is currently underway in Ireland – The Smithwick Tribunal. The Tribunal has been underway for some months and is investigating claims of collusion between the Irish Police in the town of Dundalk and the provisional IRA which led to the murders of RUC Chief Supt. Harry Breen and Supt. Robert Buchanan on March 20, 1989 in South Armagh”
10. The PSNI acknowledged receipt of the request on 22 January 2007. On 15 February 2007 the PSNI advised the complainant that it hoped to respond by 1 March 2007. On 16 March 2007 the PSNI advised the complainant that it needed to extend further the time for response in order to consider the public interest test. The PSNI advised that it was considering the exemptions at section 27 (international relations), section 30 (investigations), section 38 (health and safety) and section 40 (personal data) in relation to the requested information.
11. The PSNI did not provide a substantive response to the complainant until 27 September 2007. At this stage the PSNI confirmed that it held “a significant amount of information” relevant to the request. The PSNI advised the complainant of its decision that the requested information was exempt under sections 27(1)(a), 27(2), 30(1)(a), (b) and (c), 38(1)(a) and (b), and section 40(2). In addition, the PSNI sought to apply additional exemptions under section 23(1) (information supplied by or relating to security bodies), 24(1) (national security), 31(1)(a), (b) and (c) (law enforcement), 36(2) (prejudice to the effective conduct of public affairs), 41(1)(a) and (b) (information provided in confidence) and 42(1) (legal professional privilege).

⁴ Decision Notice FS50210846

⁵ Decision Notice FS50210845

12. The complainant was not satisfied with this response and requested an internal review on 22 October 2007.
13. The PSNI wrote to the complainant on 24 June 2008 to advise him of the outcome of the internal review. The PSNI advised that it was *"satisfied that the exemptions were properly engaged"*, and provided an explanation as to how each exemption applied to the withheld information.

The Investigation

Scope of the case

14. On 12 August 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant wished to challenge the PSNI's refusal to disclose the information he requested, and also complained about the time taken to provide the refusal notice, and to conduct the internal review.
15. The complainant advised the PSNI in his request for internal review that he accepted that information relating to the original investigation of the murders was exempt under section 30. He understood that some information was likely to be exempt. In addition, the complainant indicated to the Commissioner that he had no issue with the PSNI's application of the exemption at section 40 to the names of individual police officers. Therefore the Commissioner has not considered these portions of the withheld information in determining this case.

Chronology

16. Regrettably due to a heavy workload the Commissioner did not commence his investigation into this complaint until January 2010.
17. On 17 February 2010 the Commissioner wrote to the PSNI and asked for a copy of the withheld information together with a schedule or list of that information to identify which piece of information was being withheld under which exemption. The Commissioner also asked the PSNI to provide additional detail of its handling of the request and the application of exemptions.
18. Following further correspondence, on 4 June 2010 the PSNI provided the Commissioner with its response to his letter of 17 February 2010. The PSNI also provided a schedule of the withheld information.

Findings of Fact

19. The PSNI has advised the Commissioner that it holds “hundreds of documents” which fall within the scope of the complainant’s request. The requested information varies in nature and volume ranging from evidence gathered and held as part of the ongoing murder investigation files such as witness statements, to internal and external correspondence about and with the Tribunal.
20. The Commissioner is mindful of the fact that the complainant’s request was for information held by the PSNI relating to the Smithwick Tribunal, rather than information held by the PSNI relating to the murder investigation. The Commissioner notes that the PSNI would be expected to hold a significant amount of information relating to the murders of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan as a result of the original police investigation. In addition, the Commissioner understands that some (but not necessarily all) of the information held specifically for the purposes of the ongoing murder investigation will be of interest for the purposes of the Smithwick Tribunal and as such careful consideration needs to be given when examining the application of the exemptions as he understands there are number of different interests to consider which will undoubtedly overlap.

Analysis

Exemptions claimed

21. The Commissioner notes that the PSNI applied several exemptions to the withheld information. The PSNI provided the Commissioner with a detailed submission in relation to the exemptions claimed, but was unable to specify which parts of the withheld information were considered exempt under each exemption. Although the PSNI provided a schedule of information held, this schedule does not indicate which exemptions apply to specific pieces of information.
22. The Commissioner considers that it is for the public authority to demonstrate that information is exempt, rather than for the Commissioner to sift through information and consider where exemptions might apply. With this in mind the Commissioner considered it practical to ask the PSNI whether any exemption(s) applied to all of the withheld information.

23. The PSNI considered the matter and advised the Commissioner that all of the withheld information fell under the exemption at section 27(1)(a) of the Act, with the exception of a small portion of information which was considered exempt under section 23(1).
24. With this in mind the Commissioner has first considered the application of section 23 and then gone on to consider the application of section 27(1)(a). If the Commissioner is of the view that either of these exemptions do not apply, he will then consider the other exemptions claimed.

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

25. The PSNI advised the Commissioner that some information was exempt under this section because it related to a body that falls within section 23(3) of the Act.
26. The parts of section 23 relevant to this request states that:

‘23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

- (3) The bodies referred to in subsection (1) and (2) are –
 - (a) the Security Service
 - (b) the Secret Intelligence Service
 - (c) the Government Communications Headquarters
 - (d) the special forces
 - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000
 - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985
 - (g) the Tribunal established under section 5 of the Security Service Act 1989
 - (h) the Tribunal established under section 9 of the Intelligence services Act 1994
 - (i) the Security Vetting Appeals Panel
 - (j) the Security Commission
 - (k) the National Criminal Intelligence Service
 - (l) the Service Authority for the National Criminal Intelligence Service
 - (m) the Serious Organised Crime Agency’.

27. The PSNI advised the complainant that the information withheld under section 23(1) was supplied by a body listed under section 23(3). The PSNI provided the Commissioner with a more detailed explanation, but to include such detail in this Notice would be likely to reveal the content of the withheld information itself. Thus the Commissioner considers it sufficient to state that he is satisfied that the information in question is in fact exempt by virtue of section 23(1) of the Act.
28. As section 23 is an absolute exemption there is no requirement to consider the public interest test.

Section 27 - prejudice to international relations

29. The exemption at section 27(1) applies if its disclosure would, or would be likely to, prejudice international relations. In this case the PSNI advised the Commissioner that disclosure of the withheld information would be likely to prejudice relations with the Republic of Ireland.
30. The Commissioner is assisted by the First-tier Tribunal (Information Rights) in the case of Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence (EA/2006/0040) where it commented on the nature of the prejudice which the section 27(1)(a) exemption is designed to protect:

"Prejudice is not defined, but we accept that it imports something of detriment in the sense of impairing relations or interests or their promotion or protection and further we accept that the prejudice must be 'real, actual or of substance'..."

31. The Tribunal went on to say that:

"...prejudice can be real and of substance if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage."

32. The PSNI pointed out that that a high level of cooperation was ongoing between the UK and Irish governments in relation to the Smithwick Tribunal. The PSNI also advised that Judge Smithwick had "specifically requested" that no information be released into the public domain while the Tribunal's work was ongoing. Therefore the PSNI was of the view that disclosure of the withheld information in this case would prejudice the UK's relationship with the Smithwick Tribunal. As the Smithwick Tribunal is sponsored by the Irish government, the PSNI

was of the view that any damage to its relationship with the Smithwick Tribunal would itself be likely to prejudice its relationship with the Republic of Ireland.

33. The Commissioner is mindful of Judge Smithwick's explicit objection to the disclosure of the withheld information, and has had sight of correspondence from Judge Smithwick to this effect. The Commissioner may not refer to this in detail as to do so would reveal exempt information. However, the Commissioner is satisfied that Judge Smithwick expressed reasoned and detailed objections to disclosure of the withheld information.
34. The Commissioner is satisfied that, given the nature of the withheld information, and the arguments put forward by the PSNI that disclosure of the specific information would be likely to make relations more difficult with the Republic of Ireland. Therefore the Commissioner is satisfied that section 27(1)(a) is engaged.
35. In finding that the exemption is engaged, the Commissioner accepts that disclosure of the withheld information would be likely to prejudice relations between the UK and the Republic of Ireland. However, the exemption is qualified so the Commissioner must now consider where the public interest lies. Section 2(2) provides that exempt information must still be disclosed unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosing the information.

Public interest arguments in favour of disclosing the information

36. The Commissioner is aware that the murders of Chief Superintendent Harry Breen and Superintendent Robert Buchanan remain an unsolved crime. Although the murders were one of six cases where serious allegations of collusion were made and which were considered by Judge Cory, this is the only case from which an inquiry was established in the Republic of Ireland. The issue of suspected or alleged Garda collusion with paramilitaries is both politically sensitive and emotive. It is also a live investigation with the Historical Enquiries Team (HET) of the PSNI. There will be significant public concern that such a crime remains unsolved and particularly in the context of the history of conflict in Northern Ireland such crimes remain at the forefront of people's minds and there is a hunger for information and a need to know that justice will be done. If information relating to the inquiry were disclosed, it may provide public confidence that even such historical crimes remain at the forefront of current investigations focus and have not been forgotten.

37. The Commissioner accepts that the situation in Northern Ireland is unique and that many sections of the community are still seeking to understand who is responsible for many of the unsolved crimes. The Commissioner further understands and accepts that in Northern Ireland the passage of time does not assuage the strength of feeling in relation to such events and that there have been other high profile Tribunals in place such as the Bloody Sunday Tribunal that demonstrate this. The Commissioner recognises that the public need to be able to have confidence and trust in such Tribunals which they may not have felt in the past. The Commissioner understands that disclosing information relating to the Tribunal may provide greater transparency of the formation and workings of the Tribunal and the cooperation with that Tribunal of affected UK government departments and others. Such transparency and understanding could provide confidence and trust in the process for the entire community in Northern Ireland.

38. The PSNI recognised that disclosure of the withheld information could demonstrate to the public the extent of its cooperation with the Smithwick Tribunal and the consultative process that was undertaken. The PSNI acknowledged the general public interest in the way that police work and for public bodies to be accountable for their actions. The PSNI accepted that the disclosure of information which enables the efficiency and effectiveness of a service and how it cooperates with other jurisdictions to be scrutinised would be of benefit to the community. Further, the PSNI recognised that releasing such information could show the public that the PSNI takes a proactive approach to cross jurisdictional issues. It would further show the public that the PSNI had in fact consulted and cooperated with the Smithwick Tribunal and the Commissioner understands that disclosure of the information could further support a view that there is good working relationship between the UK and Irish governments and take the mystery out of such political international relationships.

39. The complainant argued to the Commissioner that, based on reports in the Irish media, the level of cooperation between the UK and Irish governments was questionable. The complainant also drew the Commissioner's attention to the changed political landscape in Northern Ireland, and the fact that both governments had agreed to the formation of the Tribunal. The complainant did not accept that relations could be significantly damaged if information were to be released into the public domain. The complainant did not accept Judge Smithwick's request that information should not be released, as he questioned the risk of prejudice that had been argued. The complainant noted that the Smithwick Tribunal had no legal standing outside of the Republic of Ireland. Therefore the complainant was of the view that

the public interest in disclosing the information outweighed the interests of the PSNI and the Smithwick Tribunal.

Public interest arguments in favour of maintaining the exemption

40. The PSNI put forward a number of detailed arguments as to why the public interest in this case favoured maintaining the exemption. The Commissioner notes that the Smithwick Tribunal was established by the Irish government as a result of Judge Cory's report, which itself was commissioned by the UK and Irish governments. Although the murders themselves took place in Northern Ireland, the function of the Smithwick Tribunal is seeking to ascertain whether or not there is evidence that there was collusion between a member or members of An Garda Síochána or other employees of the Irish State and paramilitaries in the murders of Chief Superintendent Breen and Superintendent Buchanan. This meant that the work of the Smithwick Tribunal was considered sensitive and significant by both governments.
41. The PSNI drew the Commissioner's attention to the fact that the Smithwick Tribunal was *"still in the evidence gathering stage and has not proceeded to a full oral hearing"*. The PSNI also emphasised the objection to disclosure provided by Judge Smithwick. The PSNI concluded that any disclosure of information or evidence by the PSNI into the public domain would have a *"detrimental and prejudicial impact on the investigation and Judge Smithwick's forthcoming work"*. The PSNI advised the Commissioner that Judge Smithwick had been (and at the time of the Commissioner's investigation, continued to be) given access to whatever information he required for the Tribunal.
42. The PSNI reminded the Commissioner that Judge Smithwick is the sole member of the Tribunal and it is his responsibility to gather evidence and seek cooperation from those parties having information to assist the Tribunal. The PSNI argued that any disclosure of any information during the investigative stage of the Smithwick Tribunal would have a detrimental effect on the effectiveness of the process. This could result in persons who have vital information being put off from coming forward or being less candid if they felt that any evidence they impart would be disclosed. Any failure to cooperate or disclosure of information (inadvertent or otherwise) could prejudice either the preliminary work of the Tribunal or the Tribunal itself and as a result would be likely to prejudice UK relations with Ireland. Judge Smithwick's opening statement⁶ is very clear:

⁶ <http://www.smithwicktribunal.ie/smithwick/HOMEPAGE.html>

'Paragraph II of the resolution of the Houses of the Oireachtas notes the possibility that the Tribunal may have to seek evidence from persons who are not compellable to give evidence. This provision anticipates the possibility that there may be persons or institutions outside the State who may be in a position to assist the Tribunal in its task. As and when such person or bodies are identified by the Tribunal, they will be called on to co-operate. It is to be hoped that such co-operation will be voluntary. However, if a person or agency outside the State declines to co-operate, the terms of reference provide for a mechanism for seeking to ensure such co-operation. Paragraph II provides that the Tribunal can report the fact that an individual or an agency is not co-operating, or not co-operating sufficiently to the Clerk of the Dáil for consideration by the Houses of the Oireachtas in conjunction with the Minister for Justice, Equality and Law Reform, having regard to the public interest'.

Balance of the public interest arguments

43. The Commissioner has taken account of the significant public interest in informing and educating the public about issues of historical and political significance, however sensitive they may be. In this case, given the context of the murder of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan being allegedly attributed to collusion, the Commissioner appreciates the public interest in disclosing the information. The Commissioner also acknowledges the strength of the public interest in being informed why it has taken this length of time since the murders and the publication of the Cory Report to establish the Smithwick Tribunal.
44. The Commissioner has taken in account the arguments put forward by the complainant as to why he considers the information should be disclosed, but does not attribute any additional weight to his arguments. The Commissioner notes the complainant's comments about the level of cooperation between the UK and Irish Governments, but has seen no evidence that necessitates disclosure of the withheld information. Irrespective of the legal standing of the Tribunal, there is clear evidence that the Tribunal would consider its work had been compromised if this information was disclosed. The Commissioner accepts that if the Tribunal considered it had been compromised by actions of the PSNI, this would be likely to make the UK's relations with the Tribunal, and with Ireland as the sponsoring state, more difficult. The Commissioner is of the view that there would need to be strong public interest arguments in order to override the explicit concerns of an inquiry established by another State.

45. The Commissioner also appreciates the importance generally of maintaining good relations with other States, particularly in relation to sensitive and historically difficult issues. The Commissioner is mindful that the Smithwick Tribunal, and the preceding Cory Report, was established as a result of significant negotiation and cooperation between the UK and Irish governments. The Commissioner accepts that disclosure of the withheld information would be likely to make UK-Irish relations more difficult, which would be likely to have a knock-on effect on the political situation in Northern Ireland. In the circumstances of this particular case the Commissioner considers this to be a strong argument in favour of maintaining the exemption at section 27(1)(a).
46. The Commissioner is also mindful that the Smithwick Tribunal was established as a public inquiry in the Republic of Ireland, and considers that it is for the Smithwick Tribunal to decide at that point what information is made public and what it would not be appropriate to disclose. That is not to say that this is an alternative to the provisions of the Act, however, it certainly weighs in the public interest balance in relation to potentially undermining the Tribunal process. The Commissioner understands that the public interest in knowing the extent to which the PSNI has cooperated with the Tribunal adds to the transparency of and public confidence of the process.
47. However, the Commissioner recognises that at the time of the complainant's request, and at the time of drafting this Decision Notice, the Smithwick Tribunal was still in its investigative phase. Therefore the Commissioner concludes that the Smithwick Tribunal was at the time of the request, and remains now, at a crucial stage which requires protection from unnecessary public scrutiny.
48. Given the wider context of the history of the conflict in Northern Ireland, the public concern over collusion by members of An Garda Síochána in the deaths of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan and allegations of collusion in other high profile deaths which remain very much at the forefront of the Northern Ireland community, any event that would cause conflict between the Irish and UK Governments has the potential to prejudice and put at risk the current and international relationship between the Governments. The Commissioner adds weight to the argument that any disclosure of information prior to the Tribunal could have a real and significant impact on the Smithwick Tribunal and subsequent relationship between the Governments, affecting international relations.

49. In light of the above, the Commissioner finds that there are considerably strong public interest arguments in favour of maintaining the exemption, and that these far outweigh the public interest in disclosing the withheld information.
50. As stated above the Commissioner notes that the exemptions at section 23(1) applied to a small portion of the information withheld and section 27(1)(a) applied to all of the remaining withheld information. Therefore the Commissioner has not gone on to consider the other exemptions claimed.

Procedural Requirements

Section 1(1)(a) and section 10(1): duty to confirm whether information is held within the statutory time period

51. Section 1(1)(a) of the Act requires that a public authority confirm or deny whether it holds information in response to a request. Section 10(1) explains that this must be done within 20 working days.
52. In this case, the complainant submitted his information request on 18 January 2007. The PSNI acknowledged receipt of the request on 22 January 2007 and then further wrote to the complainant on 15 February 2007 advising that PSNI would not be able to respond until at least 1 March 2007. The PSNI did not in either of those letters confirm whether or not it held the information as required under section 1(1)(a).
53. However, on 16 March 2007 the PSNI wrote to the complainant and informed him that it did hold information relevant to his request but that it was considering several exemptions and needed more time to consider the public interest test. This was well in excess of the time limit for compliance and accordingly the Commissioner finds that the PSNI breached section 10(1) of the Act.

Section 17: refusal notice

54. Where a public authority refuses a request for information it is required under section 17(1) of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. This notice must be provided within the timescale set out in section 10(1), no later than 20 working days following the date the request was received.
55. As indicated above, the PSNI's letter of 16 March 2007 advised that the PSNI was considering certain exemptions, it did not confirm which

exemptions had been applied and did not explain how they might be engaged. The PSNI did not provide an adequate refusal notice until 27 September 2007, some eight months after the complainant's request. Therefore the Commissioner finds that the PSNI failed to comply with section 17(1) of the Act.

The Decision

56. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in the following respects:
- The PSNI correctly withheld information under section 23(1) and section 27(1)(a) of the Act
57. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The PSNI breached section 10(1) in that it failed to confirm that it held information relevant to the request within the statutory time limit
 - The PSNI breached section 17(1) in failing to issue an adequate refusal notice within the statutory time limit.

Steps Required

58. The Commissioner requires no steps to be taken.

Other Matters

59. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

Internal Review

60. The complainant requested an internal review on 22 October 2007 but did not receive a response until 24 June 2008.
61. The Commissioner notes that the letter of 24 June 2008 indicates that the internal review took eight months to complete. Part VI of the

section 45 Code of Practice comments that internal review procedures encourage a prompt determination of the complaint. The Commissioner has also published guidance in which he advises that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

62. The Commissioner does not consider eight months an acceptable time to conduct an internal review in any particular case. The Commissioner has had separate discussions with the PSNI regarding its case handling procedures, and would expect that steps have been taken to avoid a recurrence of this level of delay.

Right of Appeal

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

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Dated the 30th day of June 2010

Signed

**Gerrard Tracey
Principal Policy adviser**

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

Legal Annex

Freedom of Information Act 2000

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.

Section 10(1) provides that –s

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.

Section 23(1) provides that:

Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Section 23(3) provides that –

The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel, (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.

Section 27(1) provides that –

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

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.