

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 31 March 2011

**Public Authority:** Northern Ireland Office  
**Address:** 11 Millbank  
London  
SW1P 4PN

### Summary

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The complainant requested information relating to firearm permits granted to individuals with criminal convictions. The Northern Ireland Office (the NIO) provided some information, but refused to disclose the remainder under section 40(2) of the Freedom of Information Act 2000 as it comprised sensitive personal data, disclosure of which would be unfair. The Commissioner considers that the exemption at section 40(2) is engaged in this case in relation to some of the withheld information; however he considers that some information can be disclosed as it does not engage the section 40(2) exemption. The Commissioner requires the NIO to disclose this information to the complainant.

### 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.

### Background

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2. Under the Firearms (Northern Ireland) Order 2004 (the Firearms Order) individuals who commit criminal offences are prevented from holding firearms for a specified period of time. These individuals are referred to as "prohibited individuals". Article 63(7) of the Firearms

Order provides that an individual may apply to the Secretary of State to request that the prohibition be removed and that a firearms permit be granted.

## The Request

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3. On 10 November 2009 the complainant made the following request to the Northern Ireland Office (the NIO):

*"Please let me have the following information under Freedom of Information legislation as I may wish to explore this issue in depth.*

1. *How many 'Secretary of State' permits have been issued under Articles 63(1) and 63(2) of the Firearms (Northern Ireland) Order 2004 in the past 10 years by you or your subordinate officers (separate individual year authorisations required please)?*
2. *What offences have these applicants been convicted of, and what period of imprisonment was directed by the Courts?*
3. *Were these offences regarded as 'political' offences?*
4. *How many applicants were released from prison early by virtue of the Belfast Agreement?*
5. *What reasons were given by the applicants for requiring a firearm (individual reasons required please)?*
6. *What type of weapons have been authorised?*
7. *How many weapons have been authorised?*
8. *Have these firearms all been subjected to ballistic testing (if bullet firing handguns) as is required by virtue of Article 54(1) and (2) of the Firearms (Northern Ireland) Order 2004. If they have not been so tested please let me know the reason why?*
9. *Has the Chief Constable subsequently refused any applications for a Firearm Certificate following the approval by the NIO of an application under Articles 63(1) and 63(2)?*
10. *How many of these weapons have been authorised for 'Personal Protection'?*
11. *How many of these applications have been refused by NIO/PSNI (percentages/numbers – including appeals please). What were the reasons given for refusal?*

12. *Who 'supported' these applications to your department, either by letter or other means?"*
4. On 10 December 2009 the NIO provided the complainant with some information relating to parts 1, 4 and 5 of his request. The NIO refused to disclose the information in parts 2 and 3 of the request, citing the exemption under section 40(2) of the Act as a basis for that refusal. The NIO further stated that it did not hold information relating to parts 6-12 of the complainant's request and referred him to the Police Service of Northern Ireland (the PSNI) who, it suggested, might hold that information.
  5. On 16 December 2009 the complainant requested an internal review of the NIO's handling of his request. The complainant explicitly challenged the NIO's decision not to disclose information relating to parts 2 and 3 of his request. The complainant argued that he would be unable to identify any of the individuals concerned, therefore he felt that the section 40(2) exemption had been wrongly applied.
  6. The complainant also revised part of his request in case this would mean that the information could be disclosed:
    - What type of offences (e.g. murder, attempted murder, causing explosions, possession of weapons etc.) were these applicants convicted of, and what was the maximum period of imprisonment directed by the Courts in each case?
    - Were these offences considered to have a link to the "Troubles" in Northern Ireland and particularly, were they linked to illegal Republican or Loyalist paramilitary organisations?
  7. On 18 February 2010 the NIO advised the complainant of the result of the internal review. The NIO upheld its original decision not to disclose the withheld information under section 40(2) (personal data of third parties). The NIO confirmed that it had also considered the complainant's revised request, but concluded that section 40(2) applied to this as well, as disclosure would still allow identification of individuals, and this would be unfair.

## The Investigation

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### Scope of the case

8. On 21 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant wished to challenge the NIO's refusal to provide him with the information specified in parts 1, 2 and 3 of his request, despite his attempt to revise the request. In relation to part 1, the Commissioner notes that the NIO disclosed the total number of prohibitions lifted since 2005, but did not break these down as requested by the complainant.
9. The complainant did not challenge the NIO's response in relation to parts 4-12 of his request. Therefore the Commissioner's decision relates solely to the withheld information, that is, parts 1-3 of the request.

### Chronology

10. On 6 May 2010 the Commissioner wrote to the NIO, requesting a copy of the withheld information and the NIO's arguments regarding its application of the exemption under section 40(2).
11. The NIO replied to the Commissioner on 8 June 2010 providing a copy of the withheld information and a detailed submission in relation to its application of the exemption.
12. The Commissioner met with NIO officials on 15 October 2010 to discuss the case. At this stage the Commissioner expressed his view that some of the withheld information could be disclosed to the complainant. The NIO provided a further submission to the Commissioner on 1 December 2010.

### Findings of Fact

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13. The Commissioner notes that the withheld information in this case comprises the following three categories:
  1. The number of prohibitions removed under the Firearms Order for each of the past 10 years.

2. The offences or type of offences these applicants were convicted of, and the maximum period of imprisonment in each case.
3. Whether these offences were linked to the "Troubles" or illegal paramilitary groups.

## Analysis

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### Exemptions

#### Section 40(2) – personal data of third parties

14. Section 40(2) of the Act (see Legal Annex) is an exemption which relates to the personal information of individuals other than the applicant. This provision creates an absolute exemption (one not subject to the public interest test) for information falling within the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (the DPA).

15. Personal data is defined in section 1(1)(a) of the DPA as:

*"data which relate to a living individual who can be identified: - from those data, or; from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."*

16. Sensitive personal data is defined in section 2 of the DPA as:

*"personal data consisting of information as to-*

- (a) the racial or ethnic origin of the data subject,*
- (b) his political opinions,*
- (c) his religious beliefs or other beliefs of a similar nature,*
- (d) whether he is a member of a trade union (within the meaning of the [1992 c. 52.] Trade Union and Labour Relations (Consolidation) Act 1992),*
- (e) his physical or mental health or condition,*
- (f) his sexual life,*
- (g) the commission or alleged commission by him of any offence, or*
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings."*

17. Personal data is exempt if either of the conditions set out in section 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3)(a)(i) and (b), where disclosure would breach any of the data protection principles as set out in Schedule 1 to the DPA.
18. The NIO has explained to the Commissioner that, in answer to previous requests under the Act, it has released information listing the years in which individuals who have subsequently had prohibitions on the possession of firearms removed were convicted. However, details of the specific offences for which they were convicted were not released. The NIO, for ease of reference, provided some of that information to the complainant as part of the internal review process.
19. The NIO has expressed its concern to the Commissioner that, were it to disclose information relating to the specific offences committed it would be relatively easy to identify the individuals concerned by putting the information together with other information in the public domain, such as media reports. The Commissioner accepts the NIO's point that identification of these individuals would be made easier given that many of the individuals concerned were convicted of offences relating to the "Troubles" in Northern Ireland, which would have been well publicised. Should the individuals be identified as having had prohibitions lifted, which is not unrealistic given the relatively small size of the professional shooting community in Northern Ireland, this could be linked back to them having had criminal convictions in the past. Such a revelation could cause damage and distress to those individuals.
20. The Commissioner has considered the three categories of withheld information as set out in paragraph 13 of this Notice. His findings in relation to each category are set out below.
  1. *The number of prohibitions removed under the Firearms Order for each of the past 10 years.*
21. The Commissioner has considered the information which falls under the above category. The Commissioner notes that the Firearms Order has only been in force since 2004, therefore the NIO only holds information relating to the number of prohibitions removed under the Order from 2005 onwards. The NIO has disclosed that 16 prohibitions have been removed since 2005, but refused to provide a breakdown by year.
22. The withheld information is statistical (in a particular year, a certain number of prohibitions were removed). Although some statistical information can identify individuals, the Commissioner does not see

how any individual could be identified from knowing that a certain number of prohibitions were removed in any particular year.

23. As such, the Commissioner finds that this anonymised information is not personal data. Therefore section 40(2) is not engaged in relation to this information. The Commissioner finds that the information ought to be disclosed.

*2. The offences or type of offences these applicants were convicted of, and the maximum period of imprisonment in each case.*

24. The Commissioner notes that the complainant originally requested the offences each individual had been convicted of, but later refined this to the "types of offences". The Commissioner considers that information relating to the original request would be personal data under the DPA as it would include reference to specific offences and periods of imprisonment which, together with the dates of convictions previously released by the NIO in response to a request under the Act, could potentially identify individuals. The Commissioner is further satisfied that, as stated by the NIO, the withheld information is sensitive personal data under section 2(g) and (h) of the DPA as it relates to the commission by individuals of offences and the sentences they were given by the court upon being convicted of those offences.

### **Would disclosure breach the first data protection principle?**

25. The NIO claimed that disclosure would be unfair and therefore would breach the first data protection principle. The first data protection principle states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*

- (a) at least one of the conditions in Schedule 2 is met, and  
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

26. In deciding whether disclosure of the withheld information would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, i.e. what damage or distress would the individuals suffer if the information was disclosed?
27. In most cases the very nature of sensitive personal data means it is most likely that disclosing it will be unfair. Thus, the reasonable



expectation of the data subject is that such information would not be disclosed and that the consequences of any disclosure could be distressing to them.

28. However, as always, it remains important to consider all the circumstances of the case. In particular it is important to consider both the reasonable expectations of the data subject regarding his or her personal information and whether some or all of that information has already been put into the public domain with the knowledge of the data subject, i.e. despite the data falling into the category of sensitive personal data, it is not sensitive to the data subject. If either factor is relevant, then it is likely that any disclosure would be fair. The Commissioner has considered whether any of these factors are relevant in this case.
29. The Commissioner is aware that the individuals concerned would have been prosecuted for and convicted of their offences in open court. Where offences are prosecuted in open court, personal data (of any kind and including sensitive personal data) will be disclosed to those in attendance. It may consequently be reported in the media and will be recorded and transcribed. However the Commissioner has considered whether it would still be unfair in this case to disclose information in response to a request for sensitive personal data which has already been disclosed in open court.
30. The Commissioner has also had regard to the reasonable expectations of the individuals concerned about what would happen to their personal information. It is logical that expectations will be shaped by what an individual is told about how their data will be used. The Commissioner believes that, although the individuals in this case would have been aware that their personal information would have been disclosed in court, this is a far more restricted disclosure than disclosure to the general public under FOI, and not what the individual would have envisaged.
31. The Commissioner notes that all of the withheld information in this category falls under section 2(g) and (h) of the DPA as it relates to individuals' commission of and sentencing for offences. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, having considered all the circumstances of the case and having ascertained that disclosure of this type of information is likely to have a detrimental or distressing effect on the individuals concerned, the Commissioner considers that it would be unfair to disclose the withheld information.



32. This remains the case even though the request, and in particular the refined request, is only for the *types* of offences for which the applicants were convicted, with no reference to specific applicants, dates of conviction or maximum periods of imprisonment.
33. The NIO argued that a list of offences could be used by a determined individual to identify individuals. The NIO drew the Commissioner's attention to the small professional shooting fraternity in Northern Ireland, and pointed out that individuals were generally well known within that community. Given the relatively small population, the NIO was of the view that there was a small but significant risk of identification of individuals, should a list of offences be disclosed.
34. The Commissioner has carefully considered the arguments put forward by the NIO with regard to identification. The Commissioner is mindful that some of these arguments were provided in confidence, and can not be included in this Notice. The Commissioner is satisfied that disclosure of a list of offences could be used to identify individuals in the way described by the NIO.
35. Therefore, the Commissioner finds that a list of the offences or types of offences should not be disclosed to the complainant.

*3. Whether these offences were linked to the "Troubles" or illegal paramilitary groups.*

36. The NIO stated in its letter to the Commissioner of 8 June 2010 that it interpreted this as referring to terrorist offences. It stated that it had not made a judgement in relation to each specific offence as it was of the view that the information would in any case be exempt under section 40(2) of the Act.
37. The Commissioner accepts that many of these convictions would have been for terrorist offences relating to the "Troubles" in Northern Ireland. These would have taken place a number of years ago and the outcome of any court proceedings would only have been known to a relatively small number of people. Even where cases were reported in newspapers, public knowledge of those cases would have been short-lived.
38. The Commissioner also accepts that some of the individuals concerned would have been released from prison under the Good Friday Agreement, which marked a fresh start for Northern Ireland in terms of moving on from the "Troubles" and the overall peace process. The Commissioner believes that, given the considerable time which has elapsed since the commission of some of the offences, disclosure

of the withheld information at this point could cause considerable distress and damage to the individuals concerned. Many of these individuals may be trying to put the past behind them and make a fresh start and disclosure of the information at this stage could only cause, as the Tribunal in the case of *London Borough of Camden v the Information Commissioner*<sup>1</sup> stated, "an unjustified humiliation" to those individuals who have reformed their behaviour.

39. The Commissioner accepts that information relating to terrorist offences falls under section 2 (g) and (h) of the DPA as it relates to individuals' commission of and sentencing for offences. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, having considered all the circumstances of the case and having ascertained that disclosure of this type of information is likely to have a detrimental or distressing effect on the individuals concerned, the Commissioner considers that it would be unfair to disclose that information.
40. Therefore, in relation to the above three categories of information, the Commissioner is satisfied that section 40(2) is engaged in relation to some of the information, i.e. that information in categories 2 and 3. He is also satisfied that it would be unfair to disclose that information.
41. However, in relation to the information held in category 1, the Commissioner is of the view that section 40(2) is not engaged and that the information should be disclosed by the NIO. The information which the Commissioner believes can be disclosed is set out in a confidential Annex to this Notice.

### **Section 1(1)(b) - duty to provide information** **Section 10(1) – time for compliance**

42. Section 1(1)(b) of the Act requires a public authority to provide information to an applicant in response to a request (unless it is exempt), and section 10(1) sets out a timeframe for response.
43. For the reasons set out above the Commissioner is of the view that some of the requested information ought to have been disclosed to the complainant at the time of his request. As this information was wrongly withheld the Commissioner concludes that the NIO failed to comply with section 1(1)(b) of the Act.

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<sup>1</sup> EA/2007/0021

44. As the Commissioner is of the view that the NIO wrongly withheld some information from the complainant, it follows that the NIO failed to communicate this information to the complainant within the statutory time limit. Therefore the Commissioner finds that the NIO failed to comply with section 10(1) in relation to this information.

## The Decision

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45. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The NIO correctly cited section 40(2) of the Act in relation to some of the withheld information.
46. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The NIO incorrectly applied section 40(2) to some of the withheld information.
  - The NIO breached sections 1(1) and 10(1) of the Act.

## Steps Required

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47. The Commissioner requires the NIO to disclose to the complainant that information which he has specified in a confidential annex to this Notice.
48. The NIO must take the steps required by this Notice within 35 calendar days of the date of this Notice.

## Right of Appeal

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49. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 31<sup>st</sup> day of March 2011**

**Signed .....**

**Faye Spencer  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### 1 - General right of access to information held by public authorities.

- (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.

#### 10 -Time for compliance with request.

- (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.

#### Section 40 (personal data) states that:

- (2) Any information to which a request for information relates is also exempt information if—
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
    - (i) any of the data protection principles
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.