

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 12 May 2011**

**Public Authority:** The Northern Ireland Commissioner for  
Complaints  
**Address:** 33 Wellington Place  
Belfast  
BT1 6HN

### **Summary**

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The complainant requested information from the Northern Ireland Commissioner for Complaints (the NICC) relating to a complaint she had made. The NICC refused to disclose the information under section 44 of the Act (statutory bar on disclosure). The relevant legislation is the Commissioner for Complaints (Northern Ireland) Order 1996. The Commissioner has found that the NICC applied section 44 of the Act correctly, and requires no steps to be taken.

### **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. This complaint concerns a request made to the Northern Ireland Commissioner for Complaints (the NICC). The NICC investigates complaints about public bodies in Northern Ireland, including organisations providing health and social care services.
3. In this case the complainant made a complaint to the NICC about the care her husband received in a hospital before he died. The NICC investigated the complaint.

## The Request

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4. On 18 May 2010 the complainant wrote to the NICC to request information relating to the NICC's investigation of her complaint. The NICC telephoned the complainant on 3 June 2010 to clarify the request:  

"...you confirmed that you were seeking access to the written advice given to the Commissioner for Complaints by his OPHSO adviser".
5. The "OPHSO adviser" was an individual who provided the NICC with clinical information to assist the NICC's investigation.
6. The NICC responded to the complainant's clarified request on 16 June 2010. The NICC advised the complainant that the requested information was exempt from disclosure under section 44 of the Act. This exemption applies if the disclosure of information is prohibited by law, and the NICC explained that the relevant statutory prohibition was Article 21(1) of the Commissioner for Complaints (Northern Ireland) Order 1996 (the Order). The text of Article 21(1) of the Order is set out in the legal annex at the end of this Notice.
7. The complainant was dissatisfied with this response, and requested an internal review from the NICC. This request was undated, but was received by the NICC on 8 July 2010.
8. The NICC wrote to the complainant on 29 July 2010 with the outcome of the internal review. The NICC explained to the complainant that some of the requested information was her personal data, and that the NICC had therefore considered whether it could be disclosed to her under the Data Protection Act 1998 (the DPA). However the NICC was of the view that the requested information could not be provided under either the DPA or the Act. The NICC upheld its decision to refuse the request under section 44 of the Act.

## The Investigation

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### Scope of the case

9. On 27 August 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant was of the view that she had a right to see the requested information, as it related to a complaint she had made to the NICC.
10. The Commissioner notes that the NICC has considered the complainant's request under the DPA, as NICC does hold some information which is

the personal data of the complainant. Section 7 of the DPA gives an individual the right to request copies of personal data about them – this is referred to as the right of subject access. The Commissioner has conducted an assessment under section 42 of the DPA into the NICC's compliance with the DPA. This does not form part of this Decision Notice, because a section 42 assessment is a separate legal process from a section 50 complaint. The complainant has received the section 42 assessment in a separate letter.

11. In light of the above this Decision Notice deals only with that information which is not the personal data of the complainant, ie the information withheld under section 44 of the Act.
12. The Commissioner understands that the complainant has personal reasons for requesting information from the NICC. However the Commissioner may only investigate whether or not the requested information may be disclosed under the Act, ie into the public domain. The Commissioner cannot consider whether the requested information could be released solely to the complainant.

## **Chronology**

13. On receipt of the complaint, the Commissioner had a number of telephone discussions with the complainant, to establish exactly what information had been requested. The complainant explained that she wanted to know what the NICC had asked the OPHSO adviser, and what he had said, so that she could better understand how the NICC investigated her complaint.
14. The Commissioner wrote to the NICC on 22 October 2010 to advise it of the complaint and to request copies of correspondence. The NICC responded to the Commissioner on 5 November 2010.

## **Analysis**

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### **Exemptions**

#### **Section 44**

15. The NICC refused to release the requested information under section 44(1)(a) of the Act. Section 44(1)(a) provides an exemption from disclosure under the Act for information which is prohibited from disclosure under any law or enactment. It is an absolute exemption, so if the statutory bar applies then the information is exempt and no public interest test is necessary.

16. In its refusal notice the NICC cited Article 21(1) of the Commissioner for Complaints (Northern Ireland) Order 1996 as a statutory prohibition under section 44 of the Act. Article 21(1) of the Order applies to any information obtained in the course of, or for the purposes of, an investigation by the NICC.
17. The Commissioner notes that under the Order the NICC is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, except in very limited circumstances. These exceptions are set out in the legal annex.
18. The Commissioner is satisfied that the withheld information in this case was obtained by the NICC in connection with an investigation. Therefore the Commissioner is satisfied that the withheld information does fall under the statutory prohibition under Article 21(1) of the Order.
19. The Commissioner is also satisfied that responding to a freedom of information request is not one of the reasons for disclosure provided for in sub-sections a) – e) of Article 21(1). The Commissioner is satisfied that none of these exceptions apply in this case, and therefore the information may not be disclosed to the complainant.

## **The Decision**

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20. The Commissioner's decision is that the NICC dealt with the request for information in accordance with the Act.

## **Steps Required**

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21. The Commissioner requires no steps to be taken.

## Right of Appeal

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22. 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)

23. 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.
24. 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 12<sup>th</sup> day of May 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
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 17(1)** provides that:

(1) A public authority which, in relation to any request for information, 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.

3. **Section 44** provides that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it–

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

## **The Commissioner for Complaints (Northern Ireland) Order 1996**

**Article 21(1)** provides that:

(1) Information obtained by the Commissioner or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except for the purposes of -

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Order;
- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in sub-paragraphs (b) and (c); or
- (e) any proceedings under Article 14, 16 or 17.