

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 4 October 2011

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

Summary

The complainant requested information relating to an application for a firearms licence. The NIO refused the request in reliance on the exemptions at section 31 and 41 of the Act. The Commissioner's decision is that the NIO correctly refused the request, although he finds that some of the information was exempt under section 40(1). The Commissioner requires no steps to be taken, but he finds that the NIO breached the Act in failing to provide a refusal notice within the statutory time for response.

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. In Northern Ireland, applications for a firearms licence are made to the Chief Constable of the Police Service of Northern Ireland (the PSNI). An appeal against the Chief Constable's decision may be made to the Secretary of State for Northern Ireland, under the Firearms (Appeals and Applications) Regulations (Northern Ireland) 2005 (the Firearms Regulations).
3. The complainant in this case is the widow of an individual who had unsuccessfully appealed against the Chief Constable's decision to refuse him a firearms licence. The individual himself sought information from the Northern Ireland Office ('the NIO') as to the reasons behind refusing

his appeal. After the individual passed away, his widow made a similar request to the NIO to seek information relating to her late husband's appeal.

The Request

4. On 14 August 2009 the complainant made an information request to the NIO. The request was for all the information requested by her late husband relating to the decision to refuse his appeal.
5. The NIO wrote to the complainant eight times between September 2009 and April 2010. Each time the NIO advised the complainant that it required further time to consider her request.
6. On 14 May 2010 the NIO provided the complainant with some of the requested information, but withheld the remainder. The NIO advised the complainant that the withheld information was exempt under the following provisions of the Act:
 - Section 31(1)(g) by virtue of section 31(2)(c) (law enforcement)
 - Section 41 (information provided in confidence)
7. The complainant was not satisfied with this response and requested an internal review on 4 August 2010.
8. On 4 October 2010 the NIO advised the complainant that it had now completed the internal review. The NIO apologised for the considerable delay in responding to the request. The NIO upheld its reliance on section 31(1)(g) by virtue of section 31(2)(c), but found that a small amount of information withheld under section 41 could be provided outside the provisions of the Act, as the complainant was the personal representative of her late husband. This included information provided by individuals who had now given their consent for this information to be disclosed to the complainant.

The Investigation

Scope of the case

9. On 24 November 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- The delay in responding to the request.
 - The NIO's refusal to disclose the requested information.
 - The NIO's failure to disclose one piece of information despite the individual who provided that information giving his consent to disclosure.
10. On 13 January 2011 and 28 February 2011 the Commissioner asked the complainant to provide copies of the relevant correspondence as he could not accept the complaint as valid for investigation until this had been provided. The complainant provided this on 14 February 2011 and 15 April 2011.
11. The Commissioner wrote to the complainant on 16 May 2011 to explain his powers under the Act. Although the Commissioner understands that the complainant has personal reasons for requesting information in this case, disclosure under the Act constitutes the release of information into the public domain. Therefore the Commissioner's decision in this case can only address whether the information should be disclosed to the public at large.
12. The Commissioner also notes that the NIO has provided the complainant with some of the requested information in accordance with other access regimes. The Commissioner's decision in this case relates only to the information withheld under the Act.

Chronology

13. The Commissioner wrote to the NIO on 26 April 2011 and 28 July 2011 to request further information in relation to the handling of the request. The NIO responded on 22 July 2011 and 7 September 2011.
14. The NIO confirmed that it had sent the complainant a copy of the information whose provider had consented to its disclosure. However, as the complainant alleged she had not received this information, the NIO agreed to re-issue it. Therefore the Commissioner has not considered this issue further in this Decision Notice.

Analysis

Exemptions

Section 31(1)(g) in conjunction with section 31(2)(c)

15. The NIO has relied on section 31(1)(g) in conjunction with section 31(2)(c) in relation to all the information except the medical report,

which was withheld under section 41 and is discussed below. The exemption at section 31(1)(g) in conjunction with section 31(1)(c) applies where disclosure would, or would be likely to, prejudice:

“the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise”.

16. Consideration of this exemption is a two stage process. For the exemption to be engaged it must be at least likely that the prejudice identified would occur. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

Identifying the prejudice

17. The NIO is relying on this exemption because it provides an appeal mechanism – and therefore a regulatory function - in relation to the issuing of firearms licences. This is set out at section 74(2) of the Firearms Regulations:

“74(2). On an appeal under this Article the Secretary of State may make such order as he thinks fit having regard to the circumstances”.

18. The Commissioner accepts that this is a reasonable interpretation of section 31(2)(c).

The nature of the prejudice

19. The NIO argued that disclosure of the withheld information in this case would prejudice the Secretary of State's ability to determine appeals as set out in the Firearms Order. The NIO was of the clear view that disclosure would, rather than would be likely to, cause this prejudice.
20. The NIO explained that the withheld information included details which would indicate some of the criteria applied when an appeal was considered by the Secretary of State. It also included indications as to how different criteria were weighted in terms of reaching a decision.
21. The NIO argued that disclosure of the withheld information in this case would therefore assist individuals to construct their submissions so as to manipulate the appeal process in future cases. This could involve concealing specific information which would count against an appeal, or fabricating evidence which would support the appeal. Potentially therefore, disclosure of the withheld information may well result in unsuitable individuals being granted firearms licences.
22. The Commissioner has inspected the withheld information, as well as detailed arguments put forward by the NIO. The Commissioner is unable

to refer to these arguments in detail without disclosing exempt information, but can confirm that he was provided with sufficiently detailed and robust arguments to satisfy him that the exemption is engaged. Therefore the Commissioner accepts that disclosure of the withheld information would prejudice the Secretary of State's ability to determine firearms appeals.

Public interest arguments in favour of disclosing the requested information

23. The complainant argued to the Commissioner that there was a strong public interest in disclosing the withheld information. In the complainant's view an injustice had been committed when her late husband's appeal was refused. The complainant was of the view that the facts surrounding the appeal should be disclosed in the interests of transparency.
24. The NIO acknowledged that there is a clear public interest argument in the effective operation of statutory regulatory regimes. The NIO accepted that there could be an argument for disclosing information which would demonstrate the thoroughness, depth and consistency of the appeals process.
25. The NIO also expressed the view that disclosure of the withheld information could increase public confidence in the firearms licensing system, by enabling a more informed public debate on this issue.

Public interest arguments in favour of maintaining the exemption

26. Firearms are by their nature dangerous weapons, and it is in the public interest to ensure that their possession is carefully restricted and regulated. The NIO emphasised the importance of protecting the effectiveness of the firearms licensing system, especially in the context of Northern Ireland's unique history.
27. The NIO pointed out that the exemption was engaged on the basis that disclosure of the withheld information would assist unsuitable individuals in gaining a firearms licence. The consequences of such individuals being allowed to hold a firearms licence would be harmful to society in general, as it would weaken the control of firearms and could result in their misuse.
28. The NIO also argued that disclosure of the withheld information into the public domain would be likely to cause distress to the deceased individual's family, as it would result in disclosure of information highly personal to the deceased individual, and the reasons why his appeal failed.

Balance of the public interest arguments

29. The Commissioner notes that the complainant has strong personal reasons for making the request: she believes that her late husband was the victim of a serious injustice when his appeal was refused. The Commissioner appreciates that there is a general public interest in informing the public about perceived or alleged injustice, and allowing proper scrutiny of such issues. However, the Commissioner has stressed to the complainant that the Act is motive-blind. This means that the Commissioner can only decide whether the information ought to be disclosed into the public domain.
30. In addition, the Commissioner notes the NIO's argument about distress being caused to the deceased individual's family, but this argument does not relate to the function at section 31(2)(c). Therefore, despite appreciating the personal issues for the complainant and her family the Commissioner does not consider this a relevant issue in terms of the exemption claimed.
31. The Commissioner notes that, in successfully arguing that the exemption is engaged, the NIO has argued that prejudice to the firearms licensing process would occur. The NIO has provided strong arguments as to why allowing this prejudice to occur would not be in the public interest. The Commissioner understands the sensitivity of firearms licensing in Northern Ireland, and accepts that there is a very strong public interest in ensuring that the licensing and appeal process is not harmed by the disclosure of information.
32. Taking all the relevant arguments into account the Commissioner accepts that there is a legitimate public interest in disclosing information which could help the public understand the firearms licensing process. However, for the reasons set out above he considers that there are overwhelming arguments in favour of maintaining the exemption.

Section 41: information provided in confidence

33. Section 41(1) of the Act states that information is exempt if it was obtained by the public authority from any other person and if disclosure of the information would constitute an actionable breach of confidence. The exemption is absolute and therefore not subject to the public interest test.
34. The NIO applied the exemption at section 41 to a medical report relating to the deceased individual.
35. In considering the application of section 41 the Commissioner is guided by a number of his own Decision Notices, and also judgments made by the First-Tier Tribunal (Information Rights). These cases have

established that the exemption at section 41 will usually apply to medical information relating to a deceased individual. The Commissioner sees no reason to depart from his established approach in this case.

36. The Commissioner is satisfied that the information in this case is confidential in nature, and has been provided to the NIO by another person in confidence. The Commissioner is aware that the medical professional who wrote the report refused consent for its disclosure.
37. Although the exemption at section 41 is absolute, the Commissioner has considered whether the NIO would be able to claim a "public interest defence" to any action for breach of confidence. This involves balancing the public interest in disclosing the requested information against the public interest in maintaining the duty of confidence, with a view to deciding whether the defence to breach of confidence would succeed.
38. In considering whether the disclosure is in the greater public interest, the Commissioner is mindful that in some circumstances there may be a public interest in the disclosure of such information, such as instances where there were suspicious circumstances surrounding a person's death. However, he considers that this will be rare, and he has not identified any such circumstances in this case.
39. The complainant has argued that she should be entitled to receive this information in her capacity as the personal representative of the deceased individual. This is relevant because the personal representative of a deceased individual has certain rights to access medical information via the Access to Health Records (Northern Ireland) Order 1993 (the AHRO).
40. The Commissioner understands the complainant's position, but does not consider that in this case there is an overriding public interest in the disclosure of the medical report under the terms of the Act. The Commissioner has no authority to adjudicate rights of access to information under the AHRO. This is a different legislative regime to the Act and access to information under the AHRO is not covered by the Act.
41. In addition, the complainant's argument is a private argument and the Commissioner does not consider it sufficient to outweigh the public interest in the protection of the confidentiality of the medical report. The Commissioner is mindful that disclosure under the Act means disclosure to the world at large and therefore believes the information in the medical report was correctly withheld under section 41 of the Act.

Procedural Requirements

42. Part of the complaint to the Commissioner relates to the time taken for the NIO to respond to the request. The complainant argued that the delay was unacceptable and breached her rights under the Act.
43. The Commissioner notes that the NIO took over six months to confirm that it held the requested information and issue a refusal notice, far exceeding the twenty working day limit set out at sections 1(1)(a), 10(1) and 17(1) of the Act.
44. The Commissioner requested and received from the NIO a detailed explanation of the steps taken to deal with the request. The Commissioner notes that there were a number of factors which contributed to the delay in issuing a refusal notice:
 - Considering an exemption not relied upon in the refusal notice
 - Consulting with other authorities
 - Obtaining legal advice
 - Seeking consent from individuals who provided information
45. The Commissioner appreciates that the NIO needed to consult with other authorities and individuals. However the Act does not provide for such an extension to the statutory time limit. The process of seeking such approval must be completed, and a refusal notice issued, within the time limits set out in the Act.

The Decision

46. 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 was entitled to refuse the request in reliance on the exemptions at section 31(1)(g) in conjunction with section 31(2)(c) and section 41.
47. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The NIO breached section 10(1) in failing to confirm that it held the requested information within the statutory time limits, and section 17(1), in failing to provide a refusal notice within the statutory time limits.

Steps Required

48. The Commissioner requires no steps to be taken.

Right of Appeal

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
LEICESTER
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

50. 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.
51. 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 4th day of October 2011

Signed

**Alexander Ganotis
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SK9 5AF**