

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 24 May 2011

**Public Authority:** Office of the First Minister and deputy First Minister  
**Address:** Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SR

### Summary

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The complainant requested information relating to the Northern Ireland Commissioner for Young People. Despite extensive correspondence, both with the complainant and the Commissioner, OFMDFM has failed to respond to the request. OFMDFM has therefore breached section 1(1)(a) and section 10(1) of the Act, and the Commissioner requires that OFMDFM respond to the complainant's 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.

### The Request

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2. On 31 January 2011 the complainant made an information request to the Office of the First Minister and deputy First Minister Northern Ireland (OFMDFM):

*"1. When was the second review into the Northern Ireland Commissioner for Children and Young People (NICCY) completed and handed over to the Office of the First and Deputy First Minister?"*

*2. Please send me all internal communication and documents relating to a) the conclusions of the report, b) the timing for release of the*

*report, c) the decision to withhold the report from the press last week and d) the decision not to place the report on the OFMDFM and NICCY websites.*

*3. Please also send me any documents held by the department relating to the "negotiated termination settlement" of £30,000 paid to NICCY's former Head of Legal and Casework- [name of individual] - in January 2010."*

3. On 2 March 2011 the complainant contacted OFMDFM to follow up her request. OFMDFM responded on the same day but advised that it would need to check what was happening with the request.
4. The complainant contacted OFMDFM on 7 March 2011 as she had not received any further response. OFMDFM responded on the same day and confirmed that it had identified the relevant information. OFMDFM advised that one of the documents identified was "still under consideration in terms of possible exemptions". OFMDFM indicated that it hoped to respond more fully within a few days.
5. The complainant did not receive any further response, and contacted OFMDFM again on 21 March 2011. On 23 March 2011 OFMDFM advised that the request was now being considered by its Private Offices, who would need to clear the response.
6. The complainant was not satisfied with this response and complained to the Commissioner on 24 March 2011.
7. On 7 April 2011 the Commissioner wrote to OFMDFM to remind it of its obligations under the Act.
8. On 21 April 2011 OFMDFM wrote to the complainant. OFMDFM advised that it was still "not in a position to respond [to the request] at this time". OFMDFM did not provide any indication or estimate as to when it would be able to respond to the request.

## **The Investigation**

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### **Scope of the case**

9. On 27 April 2011 the complainant asked the Commissioner to investigate OFMDFM's continuing failure to respond to her request.

### **Chronology**

10. On 10 May 2011 the Commissioner wrote to OFMDFM to advise that it was now investigating the complaint.

11. The Commissioner spoke with OFMDFM again on 18 May 2011 but OFMDFM was still unable to indicate when it would issue a substantive response to the complainant's request.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 1: general right of access Section 10(1): time for compliance**

12. Section 1(1)(a) of the Act requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than twenty working days after the date of receipt of the request.
14. In this case OFMDFM has indicated to the complainant that it has identified the relevant papers, but it has not explicitly confirmed that it holds the requested information. Despite correspondence with the Commissioner OFMDFM has still failed to either disclose the requested information or provide a valid refusal notice. The Commissioner therefore finds OFMDFM in breach of section 1(1)(a) and section 10(1) of the Act as it has failed to either provide the requested information or a valid refusal notice within the statutory time limit.
15. The Commissioner notes with concern OFMDFM's explanation that the delay in responding was due to the need to obtain approval from the Private Offices. The Commissioner would therefore remind OFMDFM that the Act does not provide for such an extension to the statutory time limit. The process of seeking such approval must be completed within the time limits set out in the Act.

## **The Decision**

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16. The Commissioner's decision is that OFMDFM did not deal with the request for information in accordance with the Act in the following respects:
  - Section 1(1)(a) in failing to confirm or deny that information is held relating to the complainant's request

- Section 10(1) in failing to comply with the statutory time for response.

## **Steps Required**

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17. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Respond to the complainant's request, either by providing the requested information or by issuing a refusal notice in compliance with section 17 of the Act.

18. The public authority must take the steps required by this Notice within 35 calendar days of the date of this Notice.

## **Failure to comply**

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19. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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20. 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: 0300 1234504

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)

21. 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.
22. 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 24<sup>th</sup> day of May 2011**

**Signed .....**

**Andrew White  
Group Manager**

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

## Legal Annex

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### Freedom of Information Act 2000

#### General Right of Access

##### 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."

#### Time for Compliance

##### Section 10(1) provides that –

"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."