

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 12 December 2011

**Public Authority:** The Northern Ireland Commissioner for  
Complaints

**Address:** 33 Wellington Place  
Belfast  
BT1 6HN

#### Decision (including any steps ordered)

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1. The complainant has requested information obtained by the Northern Ireland Commissioner for Complaints (the NICC) relating to a complaint he submitted to him. The Ombudsman withheld this information under section 44 of the Act.
2. The Commissioner's decision is that the NICC applied section 44 of the Act correctly. The Commissioner requires no steps to be taken.

#### Request and response

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3. This complaint concerns a request made to the NICC. The NICC investigates complaints about public bodies in Northern Ireland, including organisations providing health and social care services.
4. In this case the complainant is a medical professional involved in the care of an individual who later died. The deceased individual's partner made a complaint to the NICC about the care the deceased individual received, and the NICC investigated the complaint. The complainant made his request during the course of the NICC investigation, as he wanted to see the information obtained by the NICC which related to him.
5. The complainant's representative made the following request to the NICC on 5 May 2011:

*"In addition we would again request disclosure of the full reports provided by your independent medical advisers, as well as your draft report for [name of the complainant]'s consideration before it is finalised."*

6. The NICC responded on 1 June 2011. The NICC explained that some of the requested information was the personal data of the complainant, and this information was considered as a subject access request under the Data Protection Act 1998 (the DPA). The information which was not the complainant's personal data was considered under the Act. The NICC was of the view that this 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).
7. Following an internal review, the NICC wrote to the complainant on 8 July 2011 to advise that it upheld its decision to refuse the request under section 44 of the Act.

### **Scope of the case**

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8. On 1 August 2011 the complainant contacted the Commissioner to complain about the NICC's refusal to provide him with the information he requested.
9. The Commissioner notes that the NICC subsequently provided the complainant with the draft report. Therefore his investigation was limited to the remaining withheld information, namely the reports provided to the NICC by its independent medical advisers.
10. The Commissioner notes that the NICC considered the complainant's personal information under the DPA. 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 under the Act.
11. In light of the above this Decision Notice deals only with that information which is not the personal data of the complainant, i.e. the information withheld under section 44 of the Act.
12. The complainant indicated that he requires the requested information in order to provide an informed view in relation to the NICC's investigation. However the Commissioner stressed that disclosure under the Act constitutes the release of information into the public domain. The Commissioner is mindful that the NICC has its own provision for disclosing relevant information to appropriate parties during the course of an investigation, but this is entirely separate from the access right under the Act. Therefore the Commissioner's decision in this case can

only address whether the information should be disclosed under the Act, i.e. to the public at large.

13. The Commissioner met with the NICC on 22 September 2011 to inspect the withheld information, but did not require any further information on the application of the section 44 exemption.

## Reasons for decision

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### Section 44 exemption

14. 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.
15. 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.
16. 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.
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.
18. 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.

## Right of appeal

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19. 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@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Alexander Ganotis**  
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**Information Commissioner’s Office**  
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**Water Lane**  
**Wilmslow**  
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**SK9 5AF**