

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 May 2012

**Public Authority:** Department for Finance and Personnel Northern Ireland

**Address:** Rathgael House  
Balloo Road  
Bangor  
Co Down  
BT19 7NA

### Decision (including any steps ordered)

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1. The complainant requested information from the Department of Finance and Personnel for Northern Ireland (DFPNI) relating to the change in the process of administering ministerial cars. The Commissioner's decision is that section 35(1)(a) and 35(1)(b) were engaged but the public interest favoured disclosure. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Disclose the information to the complainant
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Request and response

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3. On 7 June 2011, the complainant wrote to DFPNI and requested information in the following terms:

"...

- 1) *Copies of all documents created since the start of 2009 about the administration of ministerial cars.*

*2) Details of all accidents involving ministerial cars since the restoration of devolution in 2007."*

4. He later revised part (1) of his request to:

"...

*1) Copies of all documents created since the start of 2009 relating to change in the process of administering Ministerial cars."*

5. On 28 July 2011 DFPNI wrote to the complainant and told him that it would disclose the information in relation to part (2) of his request, but that in relation to part (1) DFPNI was withholding the information under section 35(1)(a) and 35(1)(b) of the FOIA, and that the public interest did not favour disclosure.
6. The complainant was dissatisfied with the response and asked DFPNI to carry out an internal review of its decision. He told it that he did not believe that it had disclosed everything in part (2) of his request as he believed additional information was held such as who was driving at the time of the accident and details of the cars involved. He also told DFPNI that he did not agree with the decision to withhold the information in part (1) of his request.
7. Following an internal review DFPNI wrote to the complainant on 22 August 2011. It stated that it believed that the information disclosed at part (2) of his request met a reasonable interpretation of the request and that it was now treating the comments about additional information on cars and drivers in his email of 28 July 2011 as a new request.
8. During the Information Commissioner's investigation of the complaint DFPNI agreed to disclose additional information to the complainant falling within part (2) of the request.

### **Scope of the case**

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9. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
10. The complainant told the Information Commissioner that he believed that the withheld information should be disclosed and that the arguments provided by DFPNI were not appropriate given the nature of the information and the exemptions relied on by DFPNI.

11. As DFPNI disclosed all of the information falling within the scope of part (2) of the request, the Information Commissioner's investigation will be limited in scope to the handling of part (1) of the request only.
12. DFPNI provided the Information Commissioner with a copy of the withheld information comprising of documents numbered one to nine and referred to as such in this notice. It confirmed that document one was being withheld solely under section 35(1)(a) and that documents two to nine were being withheld under section 35(1)(a) and additionally section 35(1)(b).
13. The scope of the investigation will therefore focus on the application of section 35(1)(a) and 35(1)(b) to the nine documents identified as being withheld by DFPNI.

## **Reasons for decision**

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14. The Information Commissioner notes that the revised policy on the provision of Ministerial cars to the Ministers of the Northern Ireland Executive was implemented on 1 April 2011.

## **Section 35(1)**

15. Section 35(1) of FOIA states that information held by a government department is exempt information if it relates to (a) the formulation or development of government policy or (b) Ministerial communications. This is a qualified exemption and so it is subject to a public interest test.
16. The Information Commissioner has considered whether in the circumstances of this case the information in question can be considered as relating to either the formulation or development of government policy or ministerial communications.
17. Section 35(5) states that Government policy includes the policy of the executive committee of the Northern Ireland Executive. It also states that ministerial communications means any communications between Northern Ireland Ministers, junior Ministers or between assembly secretaries including the Assembly First Secretary.
18. DFPNI told the Information Commissioner that it withheld nine documents and provided him with copies. It told the Information Commissioner that document number one was being withheld solely under section 35(1)(a) as it had identified that document as relating solely to the formulation or development of government policy.

Additionally, documents numbered two to nine were being withheld under both section 35(1)(a) and additionally section 35(1)(b), Ministerial communications.

19. The Information Commissioner has inspected the withheld information in this case and can best describe it as a series of memos and communications between Ministers and DFPNI staff on the subject of the provision of ministerial cars. The correspondence dates between August 2010 and March 2011.

### **35(1)(a) formulation or development of government policy**

20. Section 35(1)(a) of FOIA states that:

*"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-*

*(a) the formulation or development of government policy*

21. The Information Commissioner has first considered whether in the circumstances of this case the documents numbered one to nine can be considered as relating to the formulation or development of a government policy.
22. As previously stated DFPNI has relied on section 35(1)(a) solely in relation to document one and additionally in relation to documents two to nine.
23. The Information Commissioner has published awareness guidance on section 35 which states:

*"Policy is not a precise term and to some extent what is regarded as policy depends on context. However, there is a general consensus that policy is about the development of options and priorities for ministers, who determine which options should be translated into political action and when. The white paper 'Modernising Government' refers to it as the process by which governments translate their political vision into programmes and actions to deliver 'outcomes' or desired changes in the real world. Policy can be sourced and generated in a variety of ways. For example, it may come from ministers' ideas and suggestions, manifesto commitments, significant incidents such as a major outbreak of foot and mouth disease, European Union policies, public concern expressed through letters, petitions and the like. Proposals and evidence for policies may come from external*

*expert advisers, stakeholder consultation, or external researchers, as well as civil servants.*

*Policy is unlikely to include decisions about individuals or to be about purely operational or administrative matters. For instance decisions about applications for licenses or grants are not likely to involve the formulation of policy but rather its application. Similarly, in most cases, information about an individual's FOI application will not fall into the category of information relating to the formulation or development of policy".*

24. Therefore an important consideration when determining whether something constitutes government policy is whether it involves an element of political decision making by members of the government, for example some form of Ministerial consideration of an issue, or the exercise of a political judgment as to the direction to take on an issue or what priority to give to competing demands. The information must relate to government policy as compared to departmental policy or any other type of policy.
25. The Information Commissioner acknowledges that, although the existence of political decision making in a process is a strong indicator that something constitutes government policy, this is not always an essential ingredient. Therefore, the Commissioner has gone on to consider the nature of the requested information in this case.
26. The information includes letters and briefing papers from staff at DFPNI to the Ministers of the executive as well as copies of correspondence from Ministers to DFPNI.
27. DFPNI argued that the information related to the formulation and development of government policy as it relates to the policy of provision of Ministerial cars.
28. The Information Commissioner has carefully considered the content, background and nature of the information and agrees that it can be considered as relating to the formulation and development of government policy. It is the Information Commissioner's view that the information relates to a consultation process across the Northern Ireland executive on the provision of Ministerial cars. This consultation is taking place in the context of the comprehensive spending review and accordingly the Information Commissioner is satisfied that it is government policy and that for the purposes of section 35(1)(a) the information is caught for documents one to nine.

## **Public interest**

29. As section 35(1)(a) is a qualified exemption the Information Commissioner has gone on to consider the public interest arguments.

### **Public interest arguments in favour of disclosure**

30. DFPNI argued that there is a general strong public interest in transparency in relation to the quality of advice given to Ministers and decisions taken by Government and also in the public being able to understand the basis of those decisions being taken. The comprehensive spending review is clearly an issue which has resulted in an increased public debate in recent years and the Information Commissioner attributes significant weight to the argument in this context.
31. Specifically in relation to the information in this case the Information Commissioner also attributes weight to the argument that there is increased public interest in being aware of different policy options proposed. He understands that such awareness can promote increased accountability and transparency and can show that decisions have been subject to robust debate and that a variety of options have been considered before a decision has been made.
32. The Information Commissioner attributes additional weight to the argument that there is an increased public interest in transparency of decision making in government particularly around the expenditure of public funds. There is relevant public interest in this issue even though the amounts are a small percentage of public spending; the amount is significant enough to attract a strong level of public interest. The issue of Ministerial cars, their value and appropriate use remains an issue of significant public interest. For these reasons the Information Commissioner attributes significant weight to the public interest in disclosure.

### **Public interest arguments in favour of maintaining the exemption**

33. DFPNI argued that if the information were to be disclosed there would be an inhibiting effect on the ability of Ministers to be able to freely and frankly discuss matters without being inhibited. It went on to argue that if Ministers did feel inhibited from being candid and frank with each other that this could lead to weaker policy formulation, as there would be a diminishing effect on the quality of debate. DFPNI also argued that the privacy of Minister's opinions expressed in correspondence should be maintained and that it was important that cohesion was maintained in the enforced five party coalition in Northern Ireland. It argued that

disclosure of the information would have an impact on the collective responsibility of Government.

34. The Information Commissioner understands that a collective responsibility protects high level government decisions from being personalised and enables Ministers to be totally frank, candid and have safe space to carry out their discussions. However, having noted that the request was made after the discussion on the policy had ended he understands that the need for safe space would be diminished and accordingly he does not attribute significant weight to this argument.

### **Balance of the public interest arguments**

35. DFPNI argued that it had balanced the arguments and that it had taken into account that, although there was a general public interest in transparency of decisions taken to spend public money, the figures involved were of such a small amount that the public interest would not be significant. It also argued that the greater public interest lay in the need for officials to be able to be free and frank in discussions and that in this regard, given the political makeup of Northern Ireland, that there was a greater political argument to be made for maintaining cohesion within the Northern Ireland executive where there is an enforced coalition of five political parties. It also argued that disclosure of the information could prevent the maturing of the executive in Northern Ireland.
36. The Information Commissioner has considered the arguments both for and against disclosure and he accepts that there are general public interest arguments for disclosure to increase transparency and understanding of decision making in government. However, he does not accept the DFPNI argument that, the sums of money involved being relatively low, this diminishes the public interest in favour of disclosure.
37. The Information Commissioner accepts that DFPNI has concerns that the disclosure of the information could lead to Ministers and officials being less free and frank in debate. However he notes the passage of time since an agreement was reached and the policy was implemented and for this reason the impact on Ministers being less frank in discussion is somewhat diminished. Having considered the information he notes that the issues discussed are not matters of strong political sensitivity, particularly compared to other issues that will be discussed by the NI Executive. Having considered the information the Information Commissioner has determined that there is a greater public interest in disclosure of the information as it could assure the public that Ministers have approached the situation in a reasoned and professional manner

and that opportunities were being identified to reduce costs and save public money.

38. Whilst the Information Commissioner understands the situation in Northern Ireland and accepts the DFPNI arguments that care should be taken not to destabilise the executive he believes that there is a greater argument for disclosure in understanding the thinking behind the policy on ministerial cars and how the decision making process worked.
39. Having balanced the public interest arguments for and against disclosure the Information Commissioner has attributed greater weight to the arguments for disclosure and accordingly decided that documents one to nine should be disclosed.
40. As DFPNI additionally relied on section 35(1)(b) to documents two to nine he has therefore gone on to consider the application of the exemption for ministerial communications to the information.

### **35(1)(b) Ministerial communications**

41. In the context of this exemption Ministerial communications can include written correspondence such as emails and memos between Ministers of the crown or in this case between Northern Ireland Ministers. Communications by civil servants on behalf of a Minister can also be included.
42. The Information Commissioner has inspected the documents numbered two to nine and is sufficiently convinced that the documents can be defined as Ministerial communications and so for the purposes of section 35(1)(b) that the exemption is engaged.
43. As section 35(1)(b) is a qualified exemption and therefore subject to the public interest test the Information Commissioner has gone on to consider whether in all the circumstances of the case that the public interest favours either disclosure or retention.

### ***Public interest arguments in favour of disclosure***

44. DFPNI argued that there is a general public interest in favour of disclosure of the information as this could lead to increased transparency of government decision making. It also said that there is a public interest in understanding the quality of advice given to Ministers.
45. The Information Commissioner understands that there is a public interest in openness and transparency of decision making by government. He attributes weight to the argument that there is



increased public interest in being aware of the views advanced by Ministers on an issue such as Ministerial cars. He understands that such awareness can promote increased accountability and transparency and can show that decisions have been subject to robust debate and that a variety of views have been expressed before a decision has been made.

46. The Information Commissioner attributes additional weight to the argument that there is an increased public interest in transparency of decision making in government – particularly around public. He also notes the passage of time since an agreement was reached and as such there is no ongoing live debate. For these reasons the Information Commissioner attributes significant weight to the public interest in disclosure.

***Public interest arguments in favour of maintaining the exemption***

47. DFPNI argued that, if the information were to be disclosed, there would be an inhibiting effect on the ability of Ministers to be able to freely and frankly discuss matters without being inhibited. It went on to argue that if Ministers did feel inhibited from being candid and frank with each other that this could lead to weaker policy formulation, as there would be a diminishing effect on the quality of debate. DFPNI also argued that the privacy of Minister's opinions expressed in correspondence should be maintained and that it was important that cohesion was maintained in the enforced five party coalition in Northern Ireland. It argued that disclosure of the information would have an impact on the collective responsibility of Government.
48. The Information Commissioner understands that a collective responsibility protects high level government decisions from being personalised and enables Ministers to be totally frank and candid in their discussions. He also accepts the weight to be attributed to the need for protection of collective responsibility in government. However, given the subject matter of the information which explores options about a policy for the cost and provision of Ministerial cars, he does not consider this to be a matter of great political sensitivity in terms of decision making. Further, having inspected the information he does not accept that disclosure of it would have a diminishing effect on quality of debate. Whilst he does not dismiss the importance of according some weight to the concept of collective responsibility he has given it less weight in this case.
49. DFNI has also argued that Ministers' opinions expressed in correspondence need to be protected and that maintaining cohesion in the Northern Ireland executive supported the retention of the

information. He accepts the specific arguments about the cohesion of the Northern Ireland do require careful consideration in section 35(1)(b) cases, but level of weight accorded must be on a case by case basis.

50. The Information Commissioner does not agree that significant weight can be attributed to this argument given the subject matter of the information where DFPNI, having identified several options, were simply seeking input from Ministers on preferred cost and procedural options for the provision of Ministerial cars.. He does not accept the argument that such a topic would have the impact on the cohesion of the executive which is suggested, and accordingly the Information Commissioner does not attribute significant weight to it.

### ***Balance of public interest arguments***

51. DFPNI argued that it had balanced the arguments and that it had taken into account that, although there was a general public interest in transparency of decisions taken to spend public money, the figures involved were of such a small amount that the public interest would not be significant. It also argued that the greater public interest lay in the need for officials to be able to be free and frank in discussions and that in this regard, given the political makeup of Northern Ireland, that there was a greater political argument to be made for maintaining cohesion within the Northern Ireland executive where there is an enforced coalition of five political parties. DFPNI said that it had balanced the arguments and favoured the retention of the information as it believed that maintaining cohesion in the Northern Ireland executive carried more weight for the retention of the information, as it believed the disclosure of the information could prevent the maturing of the executive in Northern Ireland.
52. The Information Commissioner has considered the arguments both for and against disclosure and he accepts that there are general public interest arguments for disclosure to increase transparency and understanding of decision making in government. However, he does not accept the DFPNI argument that, the sums of money involved being relatively low, this diminishes the public interest in favour of disclosure.
53. The Information Commissioner accepts that DFPNI has concerns that the disclosure of the information could lead to Ministers and officials being less free and frank in debate. However he notes the passage of time since an agreement was reached and for this reason the impact on any discussion is somewhat diminished. As already stated in this notice the information, which was a request for comments on various cost options, is not of a high political sensitivity or , and so he does not accept

DFPNI's argument that an impact on free and frank debate carries great weight. Having considered the information the Information Commissioner has determined that there is a greater interest in disclosure of the information as it could assure the public that Ministers have approached the situation in a reasoned and professional manner and that opportunities were being identified to reduce costs and save public money.

54. Whilst the Information Commissioner recognises the specific political situation in Northern Ireland and accepts the DFPNI arguments that information disclosures could destabilise the executive he believes that there is a greater argument for disclosure in that the public would benefit from understanding the thinking behind the policy on ministerial cars and how the decision making process worked.
55. Having balanced the public interest arguments for and against disclosure the Information Commissioner has attributed greater weight to the arguments for disclosure and accordingly decided that documents two to nine should be disclosed.

## Right of appeal

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56. 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](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)

57. 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.
58. 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** .....

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**