

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 30 January 2013

Public Authority: Public Prosecution Service for Northern Ireland
Address: Belfast Chambers
93 Chichester St
Belfast
BT1 3JR

Decision (including any steps ordered)

1. The complainant made a number of information requests following a decision by the Public Prosecution Service for Northern Ireland (the PPS) that there was insufficient evidence to bring criminal proceedings in relation to a particular incident. The PPS provided some information and said that it did not hold some information. The PPS withheld other information under sections 30(1)(c), 38, 40(2), 41 and 42 of the FOIA. The Commissioner finds that the PPS failed to respond to request 3.3.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to request 3.3, either by providing the requested information or by issuing an appropriate refusal notice.
3. The public authority must take this step 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 FOIA and may be dealt with as a contempt of court.

Background

4. This case relates to an alleged kidnapping incident in 1991, of which the complainant was the victim. The Police Service of Northern Ireland (the PSNI) investigated and submitted a file to the PPS, who advised the complainant in October 2010 that there was insufficient evidence to prosecute any individual.

5. The complainant was unhappy with this decision and the PPS agreed to carry out a review according to the PPS Code for Prosecutors.
6. Subsequently the complainant made a number of information requests on this issue to the PPS which became the subject of complaints to the Commissioner. The requests were made on the following dates:
 - a. 14 December 2010 (request 1.1)
 - b. 19 January 2011 (request 1.2)
 - c. 4 February 2011 (request 1.3)
 - d. 14 February 2011 (request 2.1)
 - e. 18 June 2011 (request 3.1)
 - f. 21 June 2011 (request 3.2)
 - g. 11 July 2011 (request 3.3)
7. This decision notice deals with requests 3.1, 3.2 and 3.3. Requests 1.1, 1.2 and 1.3 are dealt with in decision notice reference FS50426648, and request 2.1 is dealt with in decision notice reference FS50426637.

Requests and responses

Request 3.1

8. On 18 June 2011 the complainant made a request to the PPS (request 3.1). The complainant referred to the decision not to prosecute in relation to his case and asked how much the case had cost the PPS. The request is reproduced in full at Annex 1 at the end of this notice.
9. The PPS responded to request 3.1 on 21 June 2011. The PPS advised that it did not hold the requested information. The PPS reminded the complainant that it had previously provided him with the cost of external legal advice obtained in relation to his case.

Request 3.2

10. On 21 June 2011 the complainant made another request to the PPS (request 3.2). This request comprised 6 questions relating to the external legal advice obtained by the PPS. The full text of request 3.2 is set out in Annex 1 at the end of this notice.
11. The PPS responded to request 3.2 on 9 February 2012. The PPS provided the information requested at parts 1, 2, 5 and 6 of the request, and advised that it did not hold the information requested at part 3 of the request. The PPS refused the information requested at part 4 under sections 30(1)(c), 38, 40(2), 41 and 42 of the FOIA.

Request 3.3

12. On 11 July 2011 the complainant made a further request to the PPS (request 3.3). The complainant explicitly stated that he was not requesting an internal review, but was requesting "clarification and further information". Request 3.3 comprised 4 further questions relating to the legal advice obtained by the PPS in relation to his case. The full text of request 3.3 is set out in Annex 1 at the end of this notice.
13. The complainant did not receive any response to request 3.3.
14. On 31 August 2011 the complainant contacted the PPS to complain that it had not dealt with his request, although he did not specify which request he was referring to. The complainant requested that an internal review be conducted.

Scope of the case

15. The complainant contacted the Commissioner on 1 December 2011 as he had not yet received the outcome of the internal review. The complainant was dissatisfied at the lack of response from the PPS, and in any event was of the view that he should have been provided with all the information he requested.
16. Section 50 of the FOIA provides that an applicant may request that the Commissioner make a decision as to whether, in any specified respect, a public authority has dealt with a particular request in accordance with the FOIA. The complainant is thus required to specify his grounds of complaint; the Commissioner is under no obligation to question a public authority's response to a particular request if the complainant has not specified how or why he is dissatisfied.
17. The Commissioner did not identify anything in the correspondence provided which could be interpreted as expressing dissatisfaction with the information provided by the PPS in response to request 3.1 or 3.2. Therefore the Commissioner's decision in this case relates only to request 3.3. As the time taken to complete an internal review is not a section 50 matter it is dealt with at Other Matters below and does not form part of the Commissioner's decision.

Reasons for decision

Section 10(1): Time for compliance

18. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not it holds the requested information. 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 is issued.
19. 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.
20. The Commissioner acknowledged receipt of the complaints on 1 March 2012 and on this date advised the PPS that it did not appear to have responded to request 3.3. On 17 October 2012 the Commissioner advised the PPS that parts 1-4 of request 3.3 appeared to have been answered in the PPS's response to request 1.3 dated 8 March 2012. On 23 November 2012 the PPS agreed that it had indeed provided this information. The PPS agreed that part 5 was outstanding but advised that it had been "overlooked".
21. The Commissioner would point out that section 14(2) of the FOIA makes provision for repeated requests. Therefore if the PPS believed that it had already answered some or all of the complainant's requests, it could have issued a refusal notice citing section 14(2). If the PPS had previously issued such a notice it may have been permissible not to issue a further notice. However the Commissioner has seen no evidence to suggest that the PPS has previously cited section 14(2) as a basis for failing to respond to any part of request 3.3.
22. Following further correspondence with the Commissioner the PPS confirmed on 22 January 2013 that it had not responded to part 5 of request 3.3 at any time.
23. The PPS failed to provide a response to request 3.3, therefore the Commissioner must find that the PPS failed to comply with section 1 of the FOIA. If the PPS wishes to rely on section 14(2) in respect of those parts of requests 3.3 which it considers it has already answered then it should issue a refusal notice stating that and clarifying to the complainant specifically when these parts were answered. In relation to part 5 of request 3.3 the PPS should either provide the requested information or issue an appropriate refusal notice.
24. The Commissioner appreciates that the complainant was corresponding frequently – sometimes daily – with the PPS, and in these circumstances

it is more understandable that an authority would fail to identify a new (or repeated) request. However the Commissioner has given the PPS several opportunities to rectify this failure, yet it has not done so.

Other matters

Internal review

25. Although it does not form part of this decision notice the Commissioner has considered the time taken to conduct the internal review. The complainant requested an internal review on 31 July 2011, and the outcome was communicated to him on 17 April 2012. This means that the PPS took over 9 months to complete the internal review.
26. The Commissioner notes that the complainant did not specify which request he wished the PPS to review. The wording of the request for internal review suggests that it only related to request 3.3, which the PPS had not answered at that time. It would appear that despite the internal review the PPS failed to recognise that request 3.3 had not been answered, which suggests that the internal review itself may not have been adequate. However the Commissioner's criticism of the PPS in this regard is limited owing to the volume of correspondence from the complainant, which made following each individual request more difficult than it may otherwise have been.

Right of appeal

27. 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

28. 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.
29. 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

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

Annex 1

Request 3.1 - submitted on 18 June 2011

1. I am requesting information and a full and detailed breakdown of total costs to date to the taxpayer of the above case.
2. Please also include all costs and/or all/any expenses paid relating to the above case.
3. Please ensure you include all information up until the time that this request is answered.

Request 3.2 - submitted on 21 June 2011

1. When, what date(s), did the PPS request "opinion from Counsel".
2. When, what date, was all/any opinion received by the PPS.
3. Please supply copy, breakdown of the £1200 bill/invoice regards the "opinion" and also all other works carried out in this case by "Counsel".
4. Did "Counsel" confirm in any of his/her advice, written, verbal or within his/her "opinion", that there was enough evidence and/or grounds to bring prosecutions against one or more of the four persons, suspects involved in this case, if so, please supply full details and all information concerning same.
5. In PPS correspondence they talk about "During the course of the review the advices of independent counsel were taken". Please give full details of number of times the PPS requested legal "advices" in this case, the dates and the name(s) of those involved.
6. Please supply full details of all/any requests for legal advice, either verbally or written, made by the PPS concerning this case between 4th February 2011 and the date this request is answered. Please also supply full details and reasons for requesting such legal advice in this matter.

Request 3.3 - submitted on 11 July 2011

1. Can the PPS please confirm that the opinion which they claim they requested/sought on 26/11/2010 and which they claim was received by them on 26/12/2010 was the only advice and/or opinion, written or verbal, that the PPS received and/or were given in this matter. If this is not the case can the PPS supply full details, information concerning same and also dates of all/any advice.
2. Are the PPS saying that they have never sought or requested advice relating to this case, verbal or written, from Counsel(s) nor any other third parties before their 26th November 2010 request? If not, if the PPS did request any sort of advice and/or were given such advice, either written or verbal, before 26th November 2010 please supply full details, information including dates of all/any requests and reasons for such requests.
3. Please supply copy, breakdown of the £1200 bill/invoice regarding the opinion. Please also supply copy of Counsel's fee note or other document relating to fee(s) concerning above amount relating to this case.
4. Are the PPS saying that they were not sent an invoice, bill or breakdown by "Counsel", his or her chambers, office? If so please explain why not and also the reasons behind same. Again, please supply copy of Counsel's fee note and also proof of payment of said amount (£1200) by PPS.
5. Please give full details on how the PPS are billed or invoiced by Counsel(s), their chambers and or other legal firms regards external legal advice supplied to PPS. How do the PPS pay for such advice and how do the PPS record, account for such monies paid?