

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 13 August 2013

Public Authority: Department of Justice

Address: Annex A
Dundonald House
Stormont
Belfast
BT4 3SU

Decision (including any steps ordered)

1. The complainant requested information relating to the approval of a disposal schedule. The Northern Ireland Courts and Tribunals Service (NICTS) claimed that it did not hold the requested information. The Commissioner's decision is that the NICTS does not hold the requested information, therefore he does not require any steps to be taken.

Request and response

2. The NICTS is an executive agency of the Department of Justice for Northern Ireland (the Department). Therefore the Department rather than the NICTS is the public authority under the FOIA. As the complainant made his request to the NICTS this decision notice refers to the NICTS throughout.
3. By way of background, the complainant has advised the Commissioner that he made requests to the NICTS in 2009 for his personal information contained within his parents' divorce file. The divorce had been heard at a particular Court in 1986. The NICTS referred the complainant to the Public Records Office for Northern Ireland (PRONI), and he made a request to PRONI on 28 December 2009. PRONI advised the complainant on 19 January 2010 that divorce files from this date and from the Court in question had not yet been transferred to PRONI. It also advised that, although it held other divorce files from 1988-1994, these had not yet been catalogued.

4. On 22 June 2012 the complainant made a request to the NICTS for information relating to the possible destruction of documents from the divorce file. The NICS responded on 30 October 2012, and advised that records from 1986 would have been subject to the 1992 Northern Ireland Court Service Disposal Schedule. The NICTS provided the complainant with a copy of the relevant disposal schedule 17/92, which stated that such files should be held for 15 years and then transferred to PRONI. The NICTS stated that it did not hold recorded information confirming any destruction or disposal of records took place. The Commissioner has considered the handling of this request in a separate decision notice¹.

5. On 13 November 2012, the complainant made a fresh request to the NICTS. The complainant referred to the Public Records Act (Northern Ireland) 1923 (PRANI), and requested the following information:

"Section 8 requires that rules for the disposal of records shall be made with the approval of the Lord Chief Justice and shall have passed negative resolution of either Parliament or Assembly whichever structure was in place at the time. However I do not believe the schedule was approved in the first instance by the Lord Chief Justice because the Lord Chancellor produced a Code of Practice instead (Code of Practice dated 2002).

If the Northern Ireland Courts & Tribunals Service holds any evidence schedule 17/92 was passed by resolution of either Assembly or Parliament before the records were destroyed."

6. The NICS responded on 5 December 2012 and stated that it did not hold the requested information. The NICTS advised that schedule 17/92 had been drawn up as required by the Public Records (Disposal of Documents) 1925 rules. Rule 6 provided that the Lord Chief Justice or a "chief official" could appoint a person to prepare a disposal schedule. Schedule 17/92 was such a schedule, and it was approved by the Lord Chief Justice as required by PRANI. On this basis the NICTS's position was that schedule 17/92 did not need to be approved by Parliament or the Northern Ireland Assembly, therefore no record would have existed. The NICTS explained to the complainant why it considered this to be the case.

7. The complainant was dissatisfied, and requested an internal review on 18 December 2012. The complainant referred to the Public Records Act

¹ Case reference FS50483752

(Northern Ireland) 1923² (PRANI), which he interpreted as requiring public authorities to retain public records for 20 years before considering their disposal or transfer to PRONI, rather than the 15 years indicated in schedule 17/92. The complainant was of the view that schedule 17/92 did not comply with the requirements of the PRANI, therefore the NICTS should hold information to explain this discrepancy.

8. The NICTS wrote to the complainant on 5 December 2012 to confirm that the internal review was complete. The NICTS remained of the view that it did not hold the requested information. In an effort to assist the complainant the NICTS further advised that the 1992 Northern Ireland Court Service Records Disposal Schedule set out separate schedules for classes of court documents, and that these had been approved by the Lord Chief Justice.

Scope of the case

9. On 24 January 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant summarised his complaint as follows:

"The grounds on which I wish the Information Commissioner's Office to assess the Northern Ireland Courts and Tribunals Service's response to my Freedom of Information Act request are that having disposed of records before 20 years the Court Service ought to hold a record of the date records were disposed of and have legislative consent of the Northern Ireland Assembly."

10. The complainant referred to section 8 of the PRANI³, which he interpreted as requiring *"approval from the Lord Chief Justice and a resolution of Parliament before any changes could be made to the rules on disposal"*. The complainant did not specifically claim that such a resolution had taken place, but he was of the view that it ought to have done, therefore relevant information ought to be held.
11. The Commissioner stressed to the complainant that his investigation could only consider whether the requested information is held. The Commissioner is unable to consider whether the NICTS ought to hold

² http://www.proni.gov.uk/public_records_act_1923.pdf

³ <http://www.legislation.gov.uk/apni/1923/20/contents>

the requested information, or indeed whether the NICTS ought to have sought such a resolution.

Reasons for decision

12. Section 1(1)(a) of the FOIA requires that a public authority confirm or deny that information is held in response to a request. In cases where the public authority claims that information is not held, the Commissioner uses the civil standard of proof, i.e. whether it is likely or unlikely on the balance of probabilities. This approach has been supported by the Tribunal in a number of previous cases. In assessing the case the Commissioner will consider the extent and quality of the authority's search for the requested information, any other explanations provided, and the complainant's reasons for believing that the information is held.
13. In this case the NICTS says it does not hold any evidence of a resolution of the Northern Ireland Assembly or Parliament because there was no requirement to obtain such a resolution. In effect the NICTS's position is that the information has never existed and therefore it is not held.
14. The complainant's primary ground for complaint, as set out at paragraph 7 above, is that the NICTS retained public records for 15 years rather than 20 years. The complainant interprets the Public Records Act (Northern Ireland) 1923⁴ (PRANI) as requiring public authorities to retain public records for 20 years before considering their disposal or transfer to PRONI, rather than the 15 years indicated in schedule 17/92.
15. The relevant part of the PRANI is section 3(c), which states that:

"The Minister of Finance shall not issue any such warrant for the removal of any Northern Ireland records unless or until the records described in such warrant are of the age of twenty years from the making thereof, or, if the records are under that age, unless the removal thereof has been requested by the judge of the court or principal officer of the department or office to which they belong, and, in the case of records of a court, with the approval also of the Lord Chief Justice of Northern Ireland;"

⁴ http://www.proni.gov.uk/public_records_act_1923.pdf

16. The Commissioner's understanding of section 3(c) is that public records can be transferred before 20 years with the approval of relevant persons. The NICTS confirmed that schedule 17/92 was approved by the Lord Chief Justice and the then Secretary of the Department of the Environment for Northern Ireland. The NICTS provided the Commissioner with a copy of the schedule signed by these individuals.
17. The complainant has also argued that section 8 of the PRANI required *"approval from the Lord Chief Justice and a resolution of Parliament before any changes could be made to the rules on disposal"*.
18. Section 8 of the PRANI provides that rules may be made as to the "disposal of valueless documents". The full text of section 8 is set out at Annex 1 at the end of this notice. Section 8(4) provides that:

"Every rule made in pursuance of this section shall be subject to negative resolution."
19. "Negative resolution", or negative procedure, is where a statutory instrument will automatically become law unless there is an objection from either House of Parliament⁵. A similar system applies with regard to the Northern Ireland Assembly.
20. The complainant argued to the Commissioner that the NICTS's response to his request was "incomplete". The complainant was of the view that the NICTS should have provided him with its reasons for a statement made in its letter of 5 December 2012:

"...the warrant authorising a person to attend courts and remove such documents can be issued by the relevant Department without the approval and countersignature of the Lord Chief Justice of Northern Ireland."
21. The NICTS has confirmed to the Commissioner that this statement refers to the warrant issued by PRONI authorising the "appointed person" to take charge of records and remove them to PRONI. The NICTS clarified that PRONI issues the warrants rather than the NICTS, so there is no need for the Lord Chief Justice to authorise the warrant.
22. The NICTS also explained that, prior to 1992, records were maintained in accordance with the PRANI and the Disposal of Documents (Statutory

⁵ <http://www.parliament.uk/site-information/glossary/negative-procedure/>

Rules and Order) Northern Ireland 1925. The NICTS explained that destruction and preservation lists for each court tier were "*agreed administratively between PRONI and NICTS*".

23. The NICTS further advised that the Lord Chief Justice was required to approve the destruction of court related records. However, schedule 17/92 did not require the approval of the Northern Ireland Assembly or Parliament because at the time Northern Ireland was under Direct Rule (ie governed by the Secretary of State for Northern Ireland). The Commissioner would point out that the FOIA provides a right of access to recorded information. Consideration of the quality, accuracy or relevance of such recorded information falls outside the Commissioner's remit. It is not for the Commissioner to decide whether the NICTS or PRONI has correctly interpreted the PRANI, he is only required to consider whether or not the NICTS was correct to claim that it did not hold the requested information.
24. On the balance of probabilities the Commissioner is satisfied that the NICTS does not hold the requested information as it does not exist. The Commissioner is of the view that the NICTS has explained why it does not hold the requested information, and the Commissioner has seen no evidence to suggest that the NICTS sought to conceal any relevant information. Therefore the Commissioner finds that the NICTS complied with section 1(1)(a) of the FOIA. The complainant's wider issue about record keeping is beyond the scope of this decision notice.

Right of appeal

25. 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

26. 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.
27. 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
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

Public Records Act (Northern Ireland) 1923

8 Power to make rules as to disposal of valueless documents.

(1)The Minister of Finance, with such approval as is hereinafter in this section mentioned, may, if he thinks fit, make rules respecting the disposal by destruction or otherwise of documents which are deposited in or can under this Act be removed to the Public Record Office of Northern Ireland as Northern Ireland records, and which are not of sufficient public value to justify their preservation in the said Public Record Office. Such rules shall—

(a)so far as they relate to documents of any court, be made with the approval of the Lord Chief Justice of Northern Ireland; and

(b)so far as they relate to documents removed or about to be removed to the said Public Record Office from any Government department or public office in Northern Ireland, be made with the approval of the head of such department or the principal officer of such office.

(2)Before the power of disposal given by this section is exercised as to any documents, the Minister of Finance shall cause a schedule to be prepared of the documents proposed to be disposed of, showing a list of these documents and such particulars as to their character and contents as may be calculated to enable the Houses of Parliament to judge of the expediency of disposing of such documents in the proposed manner. Where there are several documents of the same class or description, it shall be sufficient to classify them, as far as practicable, according to their nature and contents, instead of specifying each document separately. Such schedule shall be laid before both Houses of Parliament, and if, during the next ten days on which either House shall sit, a resolution is passed by either House requiring the preservation of any scheduled record, such record shall not be disposed of.

(3)No rule made in pursuance of this section shall provide for the disposal of any documents of older date than the year eighteen hundred.

(4)Every rule made in pursuance of this section shall be subject to negative resolution.