

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 19 March 2014

Public Authority: Northern Ireland Policing Board
Address: Waterside Tower
31 Clarendon Road
Clarendon Dock
Belfast
BT1 3BG

Decision (including any steps ordered)

1. The complainant has requested information relating to an internal audit review of procedures within the Policing Board Pensions Administration Branch. The Policing Board refused the request, claiming reliance on the exemption at section 36(2)(c) of the FOIA. The Commissioner's decision is that the exemption at section 36(2)(c) is engaged and the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information. The Commissioner requires no steps to be taken.

Background

2. The Policing Board for Northern Ireland is responsible for the management and administration of the ill-health pension retirements of police officers¹, including injury on duty award (IOD) applications. IOD claims may be submitted by serving police officers, or retrospectively by ex-police officers², and are handled by the Pensions Administration Branch within the Policing Board.

¹ <http://www.nipolicingboard.org.uk/index/our-work/pensions-and-administration.htm>

² http://www.nipolicingboard.org.uk/index/our-work/pensions-and-administration/content_-_pensions_injury_on_duty.htm

3. The Policing Board commissioned an internal audit of procedures within the Pensions Administration Branch. Draft findings were presented to the Policing Board in December 2012, with the final internal audit report being presented in March 2013. On receipt of the draft findings the Policing Board suspended all IOD award reviews at age 65 so that it could undertake a review of its processes and procedures in this area. A working group was established in February 2013 comprising representatives from the Policing Board and the Department of Justice as well as a number of stakeholder groups representing police officers.
4. At the time of the request the working group was still considering policies and procedures with a view to making recommendations to the Policing Board and the Department of Justice. At the time of issuing this decision notice that work was ongoing. The Policing Board has advised that it will disclose the audit report once the working group has completed its remit.

Request and response

5. On 11 June 2013 the complainant requested the following information from the Policing Board:

*"1. Copy of the recommendations of the internal audit review of procedures within the Policing Board Administrative Branch.

2. Copy of the full report produced on completion of the internal audit review".*
 6. The Policing Board responded on 9 July 2013, advising that the exemption at section 35(1)(a) of the FOIA applied to the requested information, but that it required further time to consider the public interest.
 7. The Policing Board wrote to the complainant again on 25 July 2013 to advise that it had now decided that the public interest in maintaining the exemption outweighed the public interest in disclosing the requested information.
 8. The complainant requested an internal review on 27 July 2013, and the Board responded on 2 September 2013. The outcome of the internal review was that the exemption at section 35(1)(a) was upheld.
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Scope of the case

9. On 16 September 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant was of the strong view that the information he requested ought to have been disclosed.
10. On considering the correspondence it appeared to the Commissioner that the Policing Board was not entitled to rely on the exemption at section 35(1)(a) of the FOIA. This is because that exemption may only be claimed in relation to information held by a government department or by the National Assembly of Wales. The Commissioner invited the Policing Board to reconsider its position, and the Policing Board confirmed that it now wished to rely on the exemption at section 36(2)(c) of the FOIA. The Policing Board also wrote to the complainant to advise him of its revised position.
11. In light of the above the scope of the case was to determine whether or not the Policing Board was entitled to refuse the request in reliance on the exemption at section 36(2) of the FOIA. The Commissioner did not consider it necessary to ask that the Policing Board conduct an internal review of its revised position before accepting the complaint as valid.
12. During the course of the Commissioner's investigation the Policing Board agreed to disclose some of the requested information to the complainant. Therefore the Commissioner's decision in this case relates solely to the remaining withheld information, ie those parts of the audit report which have not been disclosed to the complainant. The withheld information includes the recommendations as specified by the complainant in his request.

Reasons for decision

Section 36(2)(c): prejudice to the effective conduct of public affairs

13. Section 36(2)(c) states that:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

14. For section 36 to apply the qualified person for the public authority must give their reasonable opinion that the exemption is engaged. In this case the relevant opinion was given by the Chief Executive of the Policing Board. The Commissioner accepts that the Chief Executive is the duly appointed qualified person in this case. The Policing Board has provided the Commissioner with a copy of a submission to the Chief Executive dated 29 November 2013 in which the opinion of the qualified person was sought. The Chief Executive provided his opinion on 29 November 2013.
15. In determining whether the exemption is engaged the Commissioner must next decide whether the qualified person's opinion was reasonable. The Commissioner has published guidance which sets out his approach³: if the opinion is in accordance with reason and not irrational or absurd, then it is reasonable. It is only not reasonable for these purposes if it is an opinion that no reasonable person in the qualified person's position could hold, given the facts of the situation.
16. The submission to the qualified person provided background information on the IOD review working group, and stated that at the time of the request the working group was considering policies and procedures in light of the findings of the internal audit report. The Board confirmed that the review was scheduled to be completed in March/April 2014. At that stage the Board would report on the way forward and publish information on its plans.
17. The submission set out the importance of "free thinking space" to allow the working group full consideration of the findings of the review and its recommendations. It expressed concerns about the immediate effect that disclosure of the withheld information would have on the effective operation of the review process and the working group. In particular it was suggested that disclosure of the withheld information

"...may require officials to defend their position in relation to both the audit report and what the review outcome would be".
18. The submission stated that there had been a substantial increase in correspondence from individuals, political representatives and various stakeholder organisations over the last 18 months. The submission

3

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_36_prejudice_to_effective_conduct_of_public_affairs.ashx

noted that this had resulted in increased pressure on the “small number of officials” working in this business area. If the withheld information were to be disclosed, the Policing Board would receive an increased number of enquiries from interested individuals including elected representatives, the media and the public. This would place an additional burden on officials and would have a detrimental effect on the Policing Board’s ability to complete the review process and conduct its business more generally.

19. The Commissioner’s published guidance⁴ on section 36(2)(c) accepts that

“Prejudice to the effective conduct of public affairs could refer to an adverse effect on the public authority’s ability to offer an effective public service or to meet its wider objectives or purpose... It may refer to the disruptive effects of disclosure, for example the diversion of resources in managing the effect of disclosure.

20. The Commissioner notes the Policing Board’s reference to “free thinking space”. If this referred to the need for officials to discuss and exchange views and opinions, then the Policing Board ought to have cited section 36(2)(b)(i) or (ii) of the FOIA as these would provide more appropriate exemptions. However the Commissioner understands the Policing Board’s position to be that disclosure would prejudice the functions of the Policing Board as a whole, rather than the ability of the working group to consider options and recommendations. This is on the basis that the effects of disclosure would need to be managed by the Policing Board as a public authority, and that the disruption claimed would apply to the Policing Board itself. Therefore the Commissioner has accepted this argument as relevant to section 36(2)(c) in the circumstances of this case.
21. In determining whether the exemption is engaged, the Commissioner accepts that the qualified person was provided with a detailed submission which took account of relevant factors. As Chief Executive the qualified person had sufficient knowledge and experience to provide an informed opinion. The Commissioner is satisfied that disclosure of the

4

www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf

withheld information would lead to increased correspondence, comment and enquiries, the management of which would require diversion of resources. Therefore the Commissioner accepts the qualified person's opinion and finds that the exemption at section 36(2)(c) is engaged in relation to the withheld information.

Public interest arguments in favour of disclosure

22. The Policing Board identified a number of arguments in favour of disclosing the withheld information, including the general principles of transparency and accountability in how it conducts its business.
23. The Policing Board also recognised that issues surrounding the operation of IOD award reviews at age 65 are generating substantial debate amongst interested parties. Disclosure of the withheld information would inform these parties, and the public in general, as to how the Policing Board is handling these issues.
24. The complainant argued that there was an overwhelming public interest in disclosure of the withheld information. The complainant referred to "*recent judicial decisions and Pension Ombudsman determinations*", pointing out that the administration of IOD awards and reviews was under public scrutiny.
25. The Commissioner understands that the complainant has strong personal reasons for making his request to the Policing Board. The Commissioner also acknowledges that the issue of IOD awards and reviews affects a large number of individuals in Northern Ireland, as well as across the UK. The Commissioner is mindful that his duty is to decide whether information should be disclosed into the public domain, and the public interest is broader than the question of what is of interest to the public (or interested individuals). However the Commissioner does accept that there is a legitimate public interest in disclosure of the withheld information, given the legal challenges and general public debate about the administration of IOD awards and reviews.

Public interest arguments in favour of maintaining the exemption

26. The Policing Board argued that there was a strong public interest in protecting its ability to fulfil its functions while the working group completed its work. As the qualified person was of the opinion that disclosure of the withheld information would prejudice this ability by causing disruption, the Policing Board was of the view that the public interest lay in maintaining the exemption.
27. The Policing Board explained that it was a relatively small organisation, therefore an increase in enquiries, correspondence or information requests would have a greater impact on its core business. The Policing

Board expressed concern that disclosure would require officials to defend their position both in relation to the internal audit report itself, as well as the potential outcome of the review. This would not only disrupt the focus of the working group, but would place an additional burden on officials. The Policing Board argued that it would not be in the public interest to divert staff time and resources away from other key work areas in order to manage the extra work.

28. The Policing Board also pointed out that the withheld information would not be of significant benefit to individuals involved in IOD challenges. The withheld information focused on administrative procedures, rather than analysis of legal issues or individual cases. The Policing Board considered that there was a greater public interest in allowing the working group to complete its work and produce recommendations for improvements.

Balance of the public interest

29. In accepting that the exemption is engaged the Commissioner has accepted as reasonable the opinion of the qualified person and is persuaded by his conclusion that disclosure of the withheld information would cause prejudice to the Policing Board. The Commissioner is satisfied that disclosure of the withheld information would have a significant adverse impact on the review process in terms of the diversion of resources to manage the impact of the disclosure.
30. The Commissioner understands that there is a legitimate public interest in understanding how the Policing Board is addressing administrative and procedural issues relating to IOD awards and reviews. There is also a wider public interest in informing the public about how the Policing Board carries out its functions. The proper administration of IOD awards is a matter of public interest, not only because of the large sums of public money involved, but also because it affects a large number of individuals.
31. The Commissioner notes that the Policing Board has disclosed large parts of the audit report, thus informing the public as to the key issues of concern. The Board has also confirmed to the Commissioner that it is committed to disclosing the full audit report (including the withheld information) when the working group has completed its work, although a date for publication had not been confirmed at the time of issuing this decision notice.
32. The Commissioner is of the view that there is a more compelling public interest in withholding information which is under current consideration by the working group, and which will be used to produce recommendations for improvements. The Commissioner considers that

the public interest is better served by protecting the Policing Board's ability to focus on the review, rather than diverting resources to address the prejudice caused by disclosure of the withheld information.

33. For the reasons set out above the Commissioner finds that the public interest in maintaining the exemption at section 36(2)(c) of the FOIA outweighs the public interest in disclosing the withheld information.

Right of appeal

34. 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: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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**