

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 16 February 2015

Public Authority: Department for Culture, Arts and Leisure
Address: Causeway Exchange
1-7 Bedford St
Belfast
BY1 7FB

Decision (including any steps ordered)

1. The complainant requested information transferred to the Public Records Office of Northern Ireland (PRONI), part of the Department for Culture, Arts and Leisure. PRONI confirmed that it held the requested information but, at the time of issuing this decision notice, had not provided the complainant with a substantive response to the request. The Commissioner's decision is that the public authority has failed to respond to the complainant's request within the statutory timescale.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a substantive response to his information request. If the public authority decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.
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.

Request and response

4. The request in this case was made to PRONI. PRONI is part of the Department for Culture, Arts and Leisure (DCAL). Therefore DCAL, rather than PRONI, is the public authority under schedule 1 to the FOIA and on whom this decision notice is served.
5. On 1 December 2013 the complainant requested inquest files relating to four named individuals.
6. On 4 December 2013 PRONI confirmed that it held the requested information, and on 22 January 2014 PRONI advised that the information in respect of one individual was held in an "open file". With regard to the other individuals, PRONI explained that it was required to consult with relevant third parties, and as it was working through a significant backlog it may be some time before the request could be completed.
7. On 2 February 2014 the complainant requested further information in respect of the open file. He contacted PRONI again on 13 March 2014 as he had not received a response to this request.
8. On 14 July 2014 the complainant complained to PRONI that he had not received a response to his further request relating to the open file. The complainant also complained that he had not received a substantive response to his requests relating to the other individuals.
9. On 17 July 2014 PRONI advised the complainant that it was working through its backlog in chronological order, and that it would be "some months" before a substantive response could be issued. PRONI also responded to the request of 2 February 2014 by confirming that the additional requested information was not held, and that a post mortem report had been withheld under section 38 of the FOIA.

Scope of the case

10. On 5 August 2014 the complainant contacted the Commissioner to complain that PRONI had not yet provided a substantive response to his request of 1 December 2013. The Commissioner clarified that the complaint related to the three inquest files, rather than the further request for information relating to the open file.
11. Under section 50(2)(a) of the FOIA the Commissioner is not required to make a decision if the complainant has not exhausted the public authority's internal review process. However, as PRONI has not

responded to the request there is no decision to review. Therefore the Commissioner considered it appropriate to accept the case as valid without an internal review and proceed to an investigation.

12. The Commissioner contacted PRONI on 10 December 2014 to obtain further information about the handling of the request. On 21 January 2015 PRONI advised the Commissioner that it had not yet commenced the consultation process in this case as it was working through the backlog of outstanding requests in order of receipt. PRONI was unable to provide an estimated date for compliance with the request.

Reasons for decision

Section 1: general duty to comply with a request

Section 10: time for compliance

13. Section 1(1)(a) of the FOIA requires a public authority to inform the requestor in writing whether or not it holds the requested information. This is known as the "duty to confirm or deny". Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant. This is known as the "duty to disclose".
14. Section 10(1) states that the public authority must comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request. The Freedom of Information (Time for Compliance with Request) Regulations 2004 extends the time for compliance, in relation to requests received by PRONI, from 20 working days to 30 working days.

Duty to consult the responsible authority

15. Section 66(2) of the FOIA states that, before deciding whether any exemption applies either in respect of the duty to confirm or deny or the duty to disclose, PRONI must consult the "responsible authority".
16. Section 15(5) sets out how the responsible authority is determined in various scenarios:

"(c) in the case of a record transferred to the Public Record Office of Northern Ireland from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the appropriate Northern Ireland Minister to be primarily concerned".

"(d) in the case of a record transferred to the Public Record Office of Northern Ireland from a Northern Ireland department, the Northern Ireland Minister who appears to the appropriate Northern Ireland Minister to be primarily concerned".

17. The "appropriate Northern Ireland Minister" is defined at section 84 of the FOIA as the Northern Ireland Minister in charge of the Department of Culture, Arts and Leisure for Northern Ireland (the DCAL Minister).
18. The FOIA does not prescribe any form and extent of consultation with the responsible authority. However PRONI is required to consult with the responsible authority, and reach a decision about whether or not an exemption or exclusion from the duty to confirm or deny applies to the requested information, within the time for compliance (30 working days).

Section 17: refusal notice

19. Section 17(1) of the FOIA states that if a public authority wishes to refuse a request it must provide the complainant with a refusal notice within the time for compliance. This decision notice must state what exemption is being relied upon and explain why this is the case.
20. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is "reasonable in the circumstances", and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
21. If the public authority wishes to take additional time to consider the public interest, it is still required to issue a refusal notice that complies with the requirements of section 17(1) within the time for compliance at section 10(1). This notice:

"must indicate that no decision ... has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached".
22. Although the FOIA does not define what a reasonable time is, it is the Commissioner's position that public authorities should aim to complete their consideration of the public interest within the normal 20 working days. In exceptional circumstances, the Commissioner

accepts that up to 40 working days may be required to complete this consideration.¹

23. However, in the case of PRONI the Commissioner acknowledges that the Regulations referred to at paragraph 14 above extend the "normal" time for compliance to 30 working days. Therefore PRONI is only permitted to extend the time for compliance in order to consider the public interest test under an exemption which has been applied – and communicated to the applicant – within 30 working days of the request.
24. The Commissioner is of the view that PRONI should be able to avail of the extra 20 working days to consider the public interest. Therefore the Commissioner's view is that the total time he would consider reasonable is 50 working days after the request has been received.

Application of qualified exemptions and the public interest test

25. Sections 66(3) and 66(4) of the FOIA state that if a qualified exemption is engaged then it will be for the responsible authority, rather than PRONI, to make the public interest decision regarding the duty to confirm or deny and the duty to disclose. Section 15 of the FOIA provides that in such cases PRONI must send a copy of the request to the responsible authority within the time for compliance (ie 30 working days).
26. The responsible authority is required to inform PRONI of the determination required, including public interest considerations in relation to a qualified exemption, or exclusion from the duty to confirm or deny. There is no statutory time limit but section 15(3) of the FOIA requires that the responsible authority respond to PRONI "within such time as is reasonable in all the circumstances", giving its decision as to the balance of the public interest, in respect of either the duty to confirm or deny or to disclose the information (as relevant), as required by section 66(3) or 66(4).
27. As indicated above the Commissioner's view is that the applicant should be advised of the outcome of the public interest consideration no later than 50 working days after the request has been received by the public authority.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/time-for-compliance-foia-guidance.pdf

PRONI's handling of the request

28. PRONI received the complainant's request on 2 December 2013. The time for compliance runs from the day after the date of receipt, therefore under section 15 of the FOIA PRONI was required to consult with the responsible authority and make a decision as to the application of exemptions no later than 15 January 2014.
29. PRONI has advised the Commissioner that in this case the DCAL Minister specified the Secretary of State for Northern Ireland and the Justice Minister as the responsible authorities. PRONI has issued the request files to the responsible authorities for consultation. At the time of issuing this decision notice PRONI said it aimed to provide a substantive response to the complainant in the next few weeks.

Conclusion

30. At the time of issuing this decision notice PRONI had not issued a substantive response to the complainant, over a year after receipt of the request. This clearly exceeds the 30 days allowed for compliance; therefore the Commissioner must find that PRONI has failed to comply with section 10(1) of the FOIA.
31. The Commissioner is aware that, at the time of issuing this decision notice, PRONI has a large number of information requests awaiting a response. The Commissioner has issued a number of decision notices in recent months relating to a failure by PRONI to respond to a request within the time for compliance.
32. The Commissioner understands that PRONI is required to consult with third parties before issuing a response, and in Northern Ireland the process of consultation has proven to be complex and time-consuming. The Commissioner appreciates the unique difficulties faced by PRONI in completing the consultation process within the time for compliance. However he is mindful that the FOIA regulations referred to at paragraph 14 aims to address this by providing an extended time for compliance. Therefore the Commissioner expects PRONI – and those third parties designated as “responsible authorities” – to take the necessary steps to ensure that requests are responded to within the statutory time for compliance.

Right of appeal

33. 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 123 4504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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
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Wycliffe House
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Wilmslow
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SK9 5AF