

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 March 2016

Public Authority: Department of Health, Social Services and Public Safety

Address: Annex 3 Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

Decision (including any steps ordered)

1. The complainant has requested information relating to death certification processes in Northern Ireland. The DHSSPS refused to disclose the information ("the withheld information") and cited section 35(1)(a) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the DHSSPS has correctly applied section 35(1)(a) to the withheld information.
3. Therefore the Commissioner requires no steps to be taken.

Background to the request

4. Following the publication of the report on the murders committed by GP Harold Shipman and the Luce Review, an Inter-Departmental working group was established in 2008 to consider how to improve assurance of the death certification process in Northern Ireland and to assess the need for the role of an Independent Medical Examiner to scrutinise all deaths.
5. This Inter-Departmental group included representation from the General Register Office (Department of Finance and Personnel – DFP, which has responsibility for the registration of deaths), the Coroners Service for Northern Ireland (Department of Justice – DoJ), the Department of the Environment – DoE (which has responsibility for cremation), DHSSPS and other relevant stakeholders.

Request and response

6. On 26 May 2015, the complainant wrote to the DHSSPS and requested information in the following terms:

"copies of all of the minutes from meetings of Death Certification Implementation Working Group (DCIWG) and the Interdepartmental Death Certification Steering Group (DCSG) since meetings began last year."
7. The DHSSPS responded on 22 June 2015. It stated that it was refusing to disclose the information and cited section 35(1)(a) of FOIA as a basis for this refusal.
8. Following an internal review the DHSSPS wrote to the complainant on 7 July 2015. It stated that it was upholding its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 9 July 2015 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether the DHSSPS has correctly applied section 35(1)(a) to the requested information.

Reasons for decision

11. Section 35(1)(a) provides that information is exempt if it relates to the formulation and development of government policy. Section 35(1)(a) is a class based exemption. Where a class based exemption is claimed it is not necessary to demonstrate prejudice or harm to any particular interest in order to engage the exemption. Instead, it is only necessary to show that the information falls within a particular class of information.
12. The Commissioner considers that the term 'relates to' can safely be given a broad interpretation. This is because the exemption is qualified and a public authority would be obliged to disclose information where there is no significant harm to the public interest. The Commissioner takes the view that the 'formulation' of government policy comprises the early stages of the policy process-where options are generated and sorted, risks are identified, consultation occurs and recommendations or submissions are put to a Minister. 'Development' may go beyond this stage to the processes involved in improving or altering already

- existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.
13. In this case the Commissioner has considered whether the overall purpose and nature of the withheld information can be characterised as relating to formulation or development of government policy.
 14. The DHSSPS has informed the Commissioner that the DCIWG was established specifically to take forward the formulation and development of policy relating to a series of reforms as agreed by the NI Executive, to ensure that these reforms were fully implemented, and to evaluate the impact of these reforms in order to inform a decision on the need for one of the proposed options. The DCIWG reports to the DCSG on the progress of these reforms.
 15. In relation to the minutes of DCIWG meetings, these primarily relate to updates and discussion on the various strands of the project – all of which relate to the ongoing development and implementation of policies.
 16. The DCIWG also receives updates of the policy position and discussions in relation to reforms in England, Scotland and Wales. Much of this information is shared on a confidential basis and provides an insight into the issues for consideration and the direction of travel for policy in each of the other UK jurisdictions.
 17. The DCSG minutes contain updates from DCIWG in relation to progress on the various strands, as well as more strategic discussion on the direction of travel for death certification processes in Northern Ireland. Again, these discussions relate strictly to policies which are currently being developed in relation to death certification processes and replicate much of the information which is in the DCIWG minutes. Again, confidential information from the other UK jurisdictions is shared with DCSG.
 18. The Commissioner accepts that the withheld information consists of advice given and discussions on the development and implementation of policies regarding death certification processes in Northern Ireland. He accepts that this policy formulation and development is ongoing and that the withheld information relates to that formulation and development.
 19. Therefore, the Commissioner is satisfied that section 35(1)(a) of FOIA is engaged in relation to the withheld information and has gone on to consider the public interest arguments both in favour of maintaining the exemption and disclosure of the withheld information.

Public interest arguments in favour of disclosing the withheld information

20. The DHSSPS accepts that there should be accountability and transparency of administrators and scrutiny of the decision making process. This would enable the public to see the policy-making process in operation and better understand the process specifically in relation to death certification.
21. Disclosure may carry the benefit of promoting openness and transparency around the development of policy relating to death certification, deaths in hospital, serious adverse incidents, reporting deaths appropriately to the Coroner and the need for independent scrutiny of deaths in Northern Ireland. The public will have an interest in knowing that death certification processes are robust enough to help identify and deter doctors acting in the manner that Harold Shipman once did.
22. The Commissioner acknowledges the right of the public to have access to information and to be better informed on current thinking in relation to policy decisions about death certification processes. This would allow the public to be better informed of the DHSSPS' role in developing policy in relation to these processes.

Public interest arguments in favour of maintaining the exemption

23. The DHSSPS argues that these meetings would have been seen by officials as a 'safe space' to discuss and suggest ideas on taking forward these various policies – many of which may never come to fruition. Disclosing these minutes would remove that space to openly discuss ideas and would be detrimental to the development process.
24. The DHSSPS further argues that withholding the information contained within these minutes will preserve the safe space required for members of the DCIWG and officials from each of the Departments represented to be able to openly discuss, develop and formulate government policy in relation to the Death Certification process in Northern Ireland. These meetings would have been seen by officials as a 'safe space' to discuss and suggest ideas on taking forward these various policies – many of which may never come to fruition. Disclosing these minutes would remove that space to openly discuss ideas and would be detrimental to the development process.
25. Disclosure of the minutes may have a detrimental impact on the ability of members to openly discuss the development of other related policy areas on which the proposed reforms will have a direct impact. For

example, changes to the death certification process may have a direct impact on DFP (who are responsible for death registration), DoE (who are responsible for cremation policy), the Northern Ireland Coroners Service and the DoJ who have a responsibility for Coronial policy. These departments have Ministers from different political parties. The policies are still at an early stage of development and those impacting on cross-party and cross departmental responsibilities have not yet been presented to the relevant Ministers for update or approval and therefore should not be released to the public.

Balance of the public interest arguments

26. The Commissioner has considered all of the public interest arguments for and against disclosure of the withheld information. While he accords significant weight to the public interest in openness and transparency in how public authorities make decisions, and in knowing that processes such as death certification are sufficiently robust, he has also carefully considered the DHSSPS' arguments regarding safe space and free and frank discussion.
27. The Commissioner is aware that much of the withheld information contains sensitive and confidential information which, if disclosed to the public at this early stage may cause unnecessary concerns.
28. The DHSSPS has informed the Commissioner that much of the relevant policy development will be subject to full engagement and consultation with the public in the future. It is that consultation and engagement process, in the Commissioner's view, that will allow the public to scrutinise the decision-making processes of the DHSSPS and the robustness of the policy. In order to reach the stage of full engagement and consultation with the public, the DHSSPS and the other departments involve would need a safe space in which to discuss and formulate the proposed policies in order to fully inform the public at a later stage. The Commissioner accepts that this is a strong argument in favour of maintaining the exemption.
29. Having considered all of the arguments for and against disclosure, the Commissioner is of the view that the public interest in maintaining the exemption outweighs that in disclosure. He is particularly persuaded by the DHSSPS' intention to later fully engage and consult with the public regarding the death certification processes.

Right of appeal

30. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF