

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 28 February 2017

Public Authority: Department for Communities
Address: Lighthouse Building
1 Cromac Place
Belfast
BT7 2JB

Decision (including any steps ordered)

1. The complainant has requested information transferred to the Public Records Office of Northern Ireland (PRONI), part of the Department for Communities. At the time of issuing this decision notice PRONI 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 time for compliance. The Commissioner finds that the public authority has failed to comply with section 10 of the FOIA.
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 the 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. At the time of the request PRONI was part of the Department for Culture, Arts and Leisure (DCAL), but DCAL has itself since become part of the new Department for Communities. The Department, rather than PRONI, is the public authority under schedule 1 to the FOIA and on whom this decision notice is served. However, the Commissioner has referred to PRONI throughout this decision notice for ease of reference.
5. On 22 January 2016 the complainant requested from PRONI the inquest file of Mr Arthur Rafferty, who died in 1974. PRONI acknowledged receipt of the request on 2 February 2016.
6. Following a number of holding letters, on 31 October 2016 PRONI advised the complainant that it was awaiting a response from the Department of Justice (DOJ) and the Northern Ireland Office (NIO) in response to consultation on the requested information. However, at the time of issuing this decision notice PRONI had not issued a substantive response to the complainant.

Scope of the case

7. On 6 January 2017 the complainant contacted the Commissioner to complain that PRONI had not issued a substantive response to the request.
8. 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, since 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.

The Commissioner contacted PRONI on 2 February 2017 to obtain further information about the current status of the request. PRONI responded to the Commissioner on 13 February but confirmed that it was unable to provide an estimated date for compliance with the request. For this reason the Commissioner has proceeded to issue a decision notice in this case.

Reasons for decision

Section 1: general duty to comply with a request **Section 10: time for compliance**

9. 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. 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 unless a valid refusal notice has been issued. This is known as the “duty to disclose”.
10. 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

11. 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”. It should be noted however that PRONI is the decision maker at this stage.
12. Section 15(5) of the FOIA 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”.
13. 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 (now the Minister for Communities).

14. In effect this means that PRONI is required to consult with the responsible authority and reach a decision about whether or not an exclusion from the duty to confirm or deny, or an exemption from disclosure, applies to the requested information, no later than 30 working days after the request is received.

Section 17: refusal notice

15. 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 statutory time for compliance. This decision notice must state what exemption is being relied upon and explain why this is the case. In the case of PRONI the Commissioner acknowledges that the Regulations above extend the "normal" time for compliance to 30 working days. The time for compliance runs from the day after the date of receipt.

PRONI's handling of the request

16. PRONI received the complainant's request on 22 January 2016. 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 exclusions or exemptions no later than 4 March 2016.
17. PRONI has advised the Commissioner that it issued a copy of the requested information, along with proposed redactions, to the responsible authorities (DOJ and the NIO) for consultation on 7 March 2016. However PRONI has not to date received responses from the authorities that would allow it to issue a response to the complainant.
18. At the time of issuing this decision notice PRONI had significantly exceeded the 30 working days allowed for compliance; therefore the Commissioner must find that PRONI has failed to comply with section 10(1) of the FOIA.

Other matters

19. The Commissioner has recorded in previous decision notices that PRONI has a number of information requests awaiting a response. The Commissioner has also acknowledged the unique difficulties presented by the requirement for PRONI to consult with "responsible authorities" before issuing a response.
20. That said, it remains the case that the FOIA sets out a clear, statutory time for compliance that all public authorities are expected

to meet. The FOIA does not explicitly set a timescale for the responsible authorities to respond to PRONI's consultation. It follows however that they are required to respond in a manner that allows PRONI to meet the statutory time for compliance.

Right of appeal

21. 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

22. 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.
23. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
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Wilmslow
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SK9 5AF