

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. Therefore the Commissioner finds that the public authority 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 17 May 2013 the complainant requested from PRONI the inquest file of Mr John Doherty, who died in 1975. PRONI acknowledged receipt of the request on 30 May 2013.
6. Following a number of holding letters, on 14 December 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.
7. At the time of issuing this decision notice PRONI had not issued a substantive response to the complainant.
8. For the purposes of her investigation the Commissioner asked PRONI to provide a chronology of its handling of the request. This is set out at annex 1 at the end of this notice.

Scope of the case

9. On 14 December 2016 the complainant contacted the Commissioner to complain that PRONI had not yet issued a substantive response to the request.
10. 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.
11. Regarding complaints of non-response to a request, the Commissioner is mindful that she cannot make any decision as to whether or not the requested information ought to be disclosed to the complainant. The Commissioner's decision in this case is accordingly limited to PRONI's failure to issue a substantive response within the statutory time for compliance.

12. The Commissioner prefers to resolve complaints informally where possible. However a decision notice is required in this case because PRONI is unable to provide even 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 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 refusal notice has been issued to explain any exemptions relied on. 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 extend 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:

"(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".

"(e) in the case of a record transferred to the Public Record Office of Northern Ireland from any other person, the person 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 for Culture, Arts and Leisure for Northern Ireland (now the Department for Communities).
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 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 extend the "normal" time for compliance to 30 working days. The time for compliance runs from the day after the date of receipt.
20. At the date of issuing this decision notice PRONI had not issued a substantive response to the complainant, over three years after the request was originally submitted. Therefore the Commissioner must find that PRONI has failed to comply with section 10(1) of the FOIA.

Other matters

21. The Commissioner has recorded in several previous decision notices that PRONI has a large 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.
22. 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

23. 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

24. 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.
25. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1: chronology of the request

1. On 17 May 2013 the complainant requested from PRONI the inquest file of Mr John Doherty, who died in 1975. PRONI acknowledged receipt of the request on 30 May 2013.
2. In line with section 15 of the FOIA, PRONI sent the requested information to the NI Courts and Tribunals Service (NICTS, part of DOJ) on 6 June 2013.
3. On 7 July 2014 PRONI re-issued the requested information for consultation to DOJ and the NIO as the responsible authorities under section 15 of the FOIA.
4. PRONI received a response from both authorities on 24 July 2015, almost exactly a year later. Both authorities considered that the requested information should be withheld in its entirety, citing various exemptions under the FOIA.
5. Having considered the representations provided by the DOJ and the NIO. PRONI issued further letters to both authorities on 25 April 2016. These letters set out what information PRONI was minded to release, and offered the DOJ and the NIO a further opportunity to comment.
6. At the date of issuing this decision notice PRONI had not received a response from the DOJ or the NIO.