

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 30 July 2019

Public Authority: Department of Finance
Address: Clare House
303 Airport Road
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant requested information relating to expenses claimed by the Permanent Secretary of the Department of Finance. The Department relied on section 22 of the FOIA to refuse the request, stating that the requested information would be published after the end of the financial year, ie around six months after the request was submitted. The requested information had not been published at the time of issuing this decision notice.
2. The Commissioner's decision is that the request as submitted was not clear, and the Department failed to request clarification from the complainant. Therefore the Commissioner has not made a decision with regard to section 22, although she finds that the Department failed to comply with section 1(1)(a), section 10(1) and section 17 of the FOIA.
3. The Commissioner requires the Department to take the following steps to ensure compliance:
 - i. Contact the complainant to clarify the scope of her request.
 - ii. Confirm what information the Department holds that falls within the scope of the request, or issue a refusal notice addressing the extent to which it wishes to refuse to confirm or deny what information is held.
 - iii. Subject to the above, and to the extent that the requested information is held, the Department should disclose that information to the complainant. If the Department wishes to withhold any of this information it should issue a refusal notice.

4. The public authority must take these steps 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

5. The complainant submitted the following request to the Department on 17 December 2018:

Can you send me details of the current permanent secretary's expenses since they took up the role.

I would like this in a spread sheet please, to include the amounts spent and the recipient companies.

6. The Department advised the complainant on 7 February 2019 that it was refusing to disclose the requested information on the basis of section 22(1) of the FOIA. The Department also stated that the Permanent Secretary was on secondment from the Cabinet Office, who would also publish any relevant information.
7. The complainant requested an internal review, and on 19 February 2019 the Department advised that the outcome of the internal review was to uphold the application of the exemption at section 22.

Scope of the case

8. The complainant contacted the Commissioner on 26 February 2019 to challenge the Department's refusal to disclose the requested information to her.
9. The Commissioner wrote to the Department on 10 May 2019, requesting a copy of the withheld information and further details of the Department's application of the exemption claimed. The Department asked the Commissioner to confirm whether she required this information, since the information was due to be published around the end of June 2019. The Commissioner pointed out that she was obliged to investigate valid complaints, and in this case the complaint focused on whether or not the Department was entitled to delay disclosure of the requested information. Therefore the Commissioner confirmed that she considered it appropriate to proceed to investigate.

10. As is her usual practice the Commissioner asked the Department to provide her with a full copy of the information requested by the complainant. The Department provided the Commissioner with some information, but on inspection the Commissioner noted that some of the information fell outside the scope of the request. In addition it appeared to the Commissioner that some of the requested information had not in fact been provided to her.
11. On 26 June 2019 the Commissioner wrote to the Department to clarify whether the information provided comprised all the relevant information held by the Department. On 17 July 2019 the Department provided the Commissioner with a revised response.
12. The scope of the Commissioner's investigation was to establish the extent to which the specific requested information was held by the Department. If this is not clear, the Commissioner cannot determine whether the Department was entitled to rely on section 22 to refuse the request.

Reasons for decision

Section 1: clarification of the request and information held

Section 10(1): time for compliance

13. Section 1(1)(a) provides that, subject to exclusions, a public authority is required to confirm or deny that it holds the requested information. Section 10(1) sets out that the authority is required, in most cases, to respond to the request no later than 20 working days after the request is received. Section 1(3) provides that where the authority reasonably requires further information in order to identify and locate the requested information, and has informed the applicant accordingly, it is not required to comply with the request until it receives clarification.
14. In this case the Department stated in its refusal notice that the requested information was being withheld. As set out at paragraph 6 above, it also advised the complainant that the Permanent Secretary was on secondment from the Cabinet Office, who would publish relevant information that it held.
15. In the Commissioner's opinion this response does not demonstrate compliance with section 1(1)(a) of the FOIA. It implies that some, but not all of the requested information is held, and suggests that relevant information is held by another public authority. The Commissioner has

considered the question of information held by the Cabinet Office at Other Matters below.

16. However, the Commissioner is also of the view that the Department should in the first instance have sought clarification from the complainant as to the correct interpretation of her request. Details of expenses could include travel, car parking and mileage, accommodation, subsistence or other items, so it is not clear exactly what information the complainant intended to fall within the scope of her request. Nor is it clear what level of detail was required.
17. The Commissioner is concerned that the Department issued a refusal notice without being clear as to what information it held that fell within the scope of the request. Had the Department sought and received clarification, it would have been in a position to confirm or deny that the specific requested information was held, and to decide whether to disclose it. Rather, it appears that the Department assumed that the requested information was the same as the information it intended to disclose, and proceeded to refuse the request on this basis.
18. For the reasons set out above the Commissioner finds that the Department failed to comply with section 1(1)(a) of the FOIA in that it failed to confirm or deny that it held the specific requested information. It follows that the Department also failed to comply with section 10(1).

Section 17: refusal notice

19. Section 17(1) states that if a public authority wishes to rely on an exemption to refuse any part of a request it must issue a refusal notice within the statutory time for compliance, ie 20 working days. In this case the request was submitted on 17 December 2018 but the refusal notice was not issued until 7 February 2019. This clearly exceeds the 20 working days.
20. The refusal notice must explain why the exemption applies, and in the case of qualified exemptions, must explain the public interest considerations undertaken by the public authority. The Commissioner finds that the refusal notice issued by the Department failed to provide sufficient explanation, therefore she records a failure to comply with sections 17(1)(c) and 17(3). The Commissioner is disappointed that these deficiencies were not rectified at the internal review stage.

Other matters

21. Although it does not form part of the Commissioner's decision the Commissioner wishes to comment on the Department's handling of the request as follows.
22. With regard to information held by the Cabinet Office, the Commissioner considers that the Department ought to have had regard to the Code of Practice issued under section 45 of the FOIA.¹ Paragraph 2.10 of the Code recommends that the public authority inform the applicant that the requested information is not held by them, and that it may be held by another public authority. The Code goes on to recommend that the public authority should, as best practice and where they can, provide the contact details for the public authority they believe holds the requested information.
23. In this case the Commissioner is of the opinion that the Department could have complied with the Code by providing the complainant with contact details for the relevant department within the Cabinet Office, and clarifying what information was likely to be held by that public authority.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

24. 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@justice.gov.uk

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

25. 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.
26. 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

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