

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2021

Public Authority: Department of Finance

Address: Clare House
303 Airport Road West
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant requested information about the numbers of partially retired civil servants and prison officers who worked overtime during the COVID-19 pandemic. The Department of Finance refused the request stating that the information about civil servants was not held and that information about the prison officers was exempt under section 40(2) of FOIA due to the small number of individuals involved.
2. The Commissioner's decision is that the Department of Finance (the 'Department') did hold the requested information about the numbers of partially retired civil servants but did not hold information about the numbers of partially retired prison officers.
3. Therefore, the Department failed to comply with sections 1, 10 and 17(1) of the FOIA. The Department also has not demonstrated that section 40(2) of the FOIA is engaged and is not entitled to rely on that exemption.
4. The Commissioner does not require the Department to take any further steps.

Background information

5. After the Commissioner intervened in this case, the Department has advised the Commissioner that the Human Resource (HR) information for most civil servants in the Northern Ireland Civil Service (NICS) is held on an electronic HR and payroll system called HRConnect.
6. While prison officers are also NICS civil servants, HR information for prison officers is held by the Northern Ireland Prison Service (NIPS) on a separate payroll system called Compass.
7. Staff in the Department do not have access to HR and pay information about the NIPS held within Compass. It is therefore not accessible to staff working in the Department.

Request and response

8. On 29 November 2020 the Complainant made the following request for information under the FOIA:

"Since the outbreak of COVID-19 to date. How many staff on partial retirement have assisted in working overtime both in Prison Staff Which I believe there may be no more than 4 staff on this contract within the prison staffing system. More importantly the amount of Civil Servants that have availed and helped out in this time".

9. The Department responded on 15 December 2020 and stated that it did not hold the requested information about civil servants. It refused to disclose the information about partially retired prison officers citing section 40(2) (personal data) as a basis for non-disclosure. The Department said:

"...due to the small number of prison grade staff who have partially retired, disclosure of this could lead to the identification of individuals and their personal data".

10. The complainant requested an internal review on 30 December 2020. As well as asking for the numbers of partially retired staff who worked overtime within the prison staffing system, he clarified his initial request as follows:

"To confirm that which I asked for. I requested a figure of how many civil servants who are on a similar contract as myself . Partial Retirement. Of them how many have done overtime hours due to the COVID-19 situation that we find ourselves in. How many of them have done this overtime in their own homes and finally how many of those are Prison Officers".

11. The Department provided an internal review response on 27 January 2021 maintaining its original position.

Scope of the case

12. The complainant contacted the Commissioner on 29 January 2021 to complain about the way his request for information had been handled.
13. On 3 August 2021 the Commissioner wrote to the Department asking it to review its position and asking it a number of questions regarding the information held and about the s40(2) exemption it had applied in relation to the numbers of partially retired staff who worked overtime within the prison staffing system.
14. The Commissioner advised the Department that it was unclear if the Department had considered in any detail the complainant's clarified request dated 30 December 2020 and whether it held any information falling into the scope of the clarified request.
15. As the Commissioner understood it, the clarified request asked:
 - a. *How many civil servants are on a similar contract to the complainant (Partial Retirement);*
 - b. *Of them, how many have done overtime hours due to the COVID-19 situation;*
 - c. *How many of them have done overtime in their own homes and,*
 - d. *How many of those are Prison Officers.*
16. The Department replied to the Commissioner on 17 August 2021. It confirmed that it had now located information within the scope of paragraph a of the clarified request on the number of staff who are partially retired within NICS generally. The Department disclosed this information to the complainant on 1 September 2021.
17. The Department confirmed that it did not hold information in paragraphs b and c of the clarified request, as this information is not held centrally by the Department in recorded format and does not exist in the HRConnect system.
18. In relation to paragraph d about the partially retired prison officers, the Department clarified that it did **not** hold this information at the time the request was made by the complainant. Nevertheless, despite not holding this information the Department said to the Commissioner and then in its 1 September 2021 letter to the complainant:

"Although this information is not held by the Department of Finance, according to information received from NIPS as part of DoF research following this ICO investigation, I can confirm that to provide this information could risk the possibility of personal information about individuals being disclosed. Therefore, the Department is applying Exemption 40(2) to this part of your request.

19. The Commissioner considers that the matters to be decided are the extent to which the specific requested information was held by the Department at the time of the request and whether it was correct for the Department to rely on section 40(2) FOIA to withhold information about the prison officers, when by its own admission, it did not hold that particular information at the time the request was made.

Reasons for decision

Section 1: information held/not held

20. Section 1(1)(a) of FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information and, if so, to have that information communicated to him. This applies to the information held at the time when the request is received.
21. The Commissioner is concerned that the Department initially issued a refusal notice to the complainant without being clear as to what information it held that fell within the scope of the request. In the Commissioner's opinion, the Department failed to initially carry out adequate and appropriate searches for relevant information in response to the complainant's request for information and his request for review.
22. In this case, the Department's first response to the request in December 2020 and its internal review decision on 27 January 2021 was that it did not hold the requested information about partially retired civil servants (paragraph a-c of the clarified request) and it refused to provide the remainder of the information in paragraph d, about the prison officers, citing section 40(2) of the FOIA – third party personal data.
23. After the ICO intervened in the case in August 2021, the Department subsequently advised the Commissioner and the complainant that the Department did in fact hold the information in paragraph a of the clarified request about partially retired civil servants (and it was provided to the complainant on 1 September 2021).

24. However, the Commissioner accepts that the Department did not hold the information in paragraphs b and c of the clarified request, as this information is not held centrally by the Department. On the balance of probabilities, the Commissioner accepts the Department's explanation in this regard. She is satisfied that, after her intervention, the Department undertook appropriate searches for information.
25. The Commissioner also notes that information about the numbers of partially retired prison officers is not held on HRConnect by the Department, it is held on Compass by NIPS. It is therefore not accessible to staff working in the Department and it is the Commissioner's view that the information was therefore not held by the Department at the time of the original request.
26. At no point has the Department clearly communicated to the complainant that the Department does not hold the requested information about the numbers of partially retired prison officers.
27. It is the Commissioner's opinion therefore that the Department failed throughout this case to tell the complainant that it did not hold the requested information about partially retired prison officers.
28. For the reasons set out above the Commissioner finds that the Department failed to comply with section 1 of the FOIA as it failed to state that it did not hold the specific requested information until after the Commissioner's intervention.

Section 40(2)(a) – third party personal data

29. The Department in its original response to the complainant's request stated that it was refusing to disclose the information requested regarding partially retired prison officers. In its response to the clarified request, it again refused to disclose the information regarding partially retired prison officers, (i.e. that information which was requested in paragraph d of the clarified request.) On both occasions, it cited section 40(2) of the FOIA as a basis for non-disclosure. The Department has since stated, following the Commissioner's intervention, that it does not hold information relating to prison officers falling within the scope of either the original or clarified request.
30. As a result, it is the Commissioner's view that the Department has not demonstrated that section 40(2) of the FOIA is engaged and it is not entitled to rely on that exemption in its responses to the complainant. It is not possible to apply an exemption and to withhold information on the

basis of that exemption, to information that the Department did not hold at the time of the request.

31. In addition, section 16 of the FOIA sets out a duty for public authorities to provide reasonable advice and assistance to applicants requesting information. Once the Department knew that the information about the prison officers was held by another public authority (NIPS), it made no attempt to transfer the request to them or advise the Complainant to redirect their request. This is dealt with further below under 'Other Matters'.

Procedural Matters

Section 10 - time for compliance

32. Section 10(1) of FOIA sets out that the public authority is required to respond to a request no later than 20 working days after the request is received.
33. The complainant made his request for information on 29 November 2020. The Department disclosed further information to the complainant on 1 September 2021.
34. The Commissioner's decision is therefore that the Department did not comply with the requirements of section 10 in that it has not provided all of the information which falls within the scope of the request within 20 working days.

Section 17 – refusal notice

35. Section 17(1) of the Act states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies".

36. The Department failed to issue a refusal notice stating that the following information is not held: information about the numbers of partially retired prison officers.

37. As the Department does not hold information about the numbers of partially retired prison officers then a refusal notice should have been issued in this respect.
38. The Commissioner therefore finds that the Department breached section 17(1) of the FOIA.

Other matters

39. The Commissioner wishes to comment on the Department's handling of the request as follows.
40. The Commissioner considers that the Department demonstrated a lack of clarity regarding the records held. As a result, it failed to provide an adequate response to the request in terms of either providing information or issuing an adequate refusal notice, which has extended the duration of the request unnecessarily.
41. With particular regard to section 16 FOIA and the information held by NIPS (about the numbers of partially retired staff who worked overtime within the prison staffing system), the Commissioner considers that the Department ought to have had regard to the Code of Practice issued under section 45 of the FOIA.
42. Paragraph 2.12 of the Code recommends that the public authority inform the requester that, at the time the request was made, 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, provide the contact details for the public authority they believe holds the requested information. The Commissioner is not aware that the Department provided the Complainant with NIPS's contact details at any stage of the case, nor suggest that he make a fresh request to NIPS for the requested information about prison officers that it does not hold.

Right of appeal

43. 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: 0203 936 8963.

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

44. 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.
45. 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

Deirdre Collins
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Wycliffe House
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