

## FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

### DECISION NOTICE

5 October 2006

**Public authority:** The Department of Culture, Arts and Leisure  
**Address:** The Interpoint Building  
York Street  
Belfast  
BT15 1AQ

#### **Summary decision and action required**

The Information Commissioner's decision in this matter is that the Department of Culture, Arts and Leisure (the "Department") has not dealt with the request made by the "complainant" in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act"). The Commissioner is also not satisfied that the Department has complied with the requirements of section 17 of the Act in relation to the refusal notice in this case.

The Department having now communicated to the complainant the information referred to at paragraph 4.2.8 below, the Commissioner does not require it to take any further steps in relation to the complainant's request.

#### **1.0 Application for a Decision and the Duty of the Commissioner**

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part 1 of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

#### **2.0 The Complaint**

- 2.1 This complaint relates to a refusal by the Department to disclose in full a report relating to an investigation into allegations made by the complainant regarding conduct of the Chief Executive of Waterways Ireland (the "Report"). The Report comprises the detail of the investigations, witness evidence and conclusions of the investigators in relation to the following allegations made by the complainant:
- i) Bullying and harassment of the complainant and other staff associated with him by the Chief Executive;
  - ii) Victimisation and continuation of bullying and harassment of the complainant as a result of highlighting the above issues;
  - iii) A culture of patronage, bullying and secrecy emanating from the Chief Executive;
  - iv) Questionable recruitment and promotion practices in relation to certain posts.

On 5 April 2005, the conclusions and recommendations of the investigators into all of the above allegations were released into the public domain as a result of a joint statement of the Department and the Department of Community, Rural and Gaeltacht affairs (the "DCRGA"). The Report however has never been published in full.

- 2.1.1 Waterways Ireland is one of the six North-South Implementation Bodies established by international agreement between the British and Irish Governments in 1999. These bodies are not subject to the Act, nor are they subject to freedom of information legislation in the Republic of Ireland (the "ROI"). The Department is the sponsor body in Northern Ireland responsible for Waterways Ireland, and is covered by the Act. The Department of Community, Rural and Gaeltacht Affairs is the sponsor body responsible for Waterways Ireland in the ROI and is covered by Freedom of Information legislation in the ROI.
- 2.2 In January 2003, the complainant wrote to the Department and the DCRGA alleging he had been subjected to bullying and harassment by the Chief Executive (the "CEO") of Waterways Ireland. The sponsor bodies initiated a joint investigation in relation to these allegations, part of which was conducted under the Department's internal 'Procedures for Dealing with Equal Opportunities and Harassment Complaints'.
- 2.3 On 14 February 2005, the complainant made a request in writing to the Department for the Report on that investigation as follows:
- 'I am therefore requesting release of the report to me under the Freedom of Information Act 2000 and the Data Protection Act 1998'.*
- 2.4 The Department confirmed to the complainant on 15 March 2005 that it held the information requested. In accordance with its obligations as a data controller under section 7 of the Data Protection Act 1998 (the "DPA") the Department subsequently provided the complainant with

information contained in the Report which the Department considered to be his personal information, but did not provide the remainder of the Report. The Department informed the complainant that the redacted information was in its view exempt by virtue of the provisions of sections 27, 36, 40(2) and 41 of the Act.

- 2.5 The complainant wrote to the Department on 5 April 2005 seeking a review of the Department's decision. On 20 May 2005, the Department informed the complainant of its decision to uphold the refusal to release the remainder of the Report, relying on the exemptions in sections 27(2), 36, 41 and 40(2) of the Act.
- 2.6 On 27 June 2005, the complainant applied to the Commissioner for a decision under section 50 of the Act, whether the Department had acted correctly in refusing to release the Report in full.

### 3.0 Relevant Statutory Obligations under the Act

3.1 **Section 1(1)** provides that –

*“Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.”*

3.2 **Section 2(2)** provides that –

*“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –*

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or*
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”*

3.3 **Section 17** provides that –

*“(1) A public authority which ... 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.”*

3.4 **Section 27** provides that:

*“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

- (a) relations between the United Kingdom and any other State,*
- (b) relations between the United Kingdom and any international organisation or international court,*
- (c) the interests of the United Kingdom abroad, or*
- (d) the promotion or protection by the United Kingdom of its interests abroad.*

*“(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.”*

**3.5 Section 36** provides that:

*“(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-*

- (a) would, or would be likely to, prejudice-*
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or*
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or*
  - (iii) the work of the executive committee of the National Assembly for Wales,*
- (b) would, or would be likely to, inhibit-*
  - (i) the free and frank provision of advice, or*
  - (ii) the free and frank exchange of views for the purposes of deliberation, or*
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.*

**3.6 Section 40** provides that:

*“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*

- (2) Any information to which a request for information relates is also exempt information if –*
  - (a) it constitutes personal data which do not fall within subsection (1), and*
  - (b) either the first or the second condition below is satisfied.*

- (3) The first condition is –*
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –*
    - (i) any of the data protection principles, or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and*

*(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded”.*

*(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”*

3.7 **Section 41** provides that:

*“(1) Information is exempt information if-*

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”*

#### **4.0 Review of the case**

##### **4.1 Scope of the Review**

4.1.1 The Commissioner considered whether or not the Department had complied with the requirements of Part 1 of the Act in relation to the complainant's request dated 14 February 2005. In particular the Commissioner considered whether the Department had properly applied the exemptions cited in the refusal notice to the redactions in the Report.

4.1.2 The Commissioner is not obliged under section 50 of the Act to consider whether or not the Department had fully complied with its obligations under the DPA. However, the Commissioner did advise the Department of his view that more of the complainant's personal information ought to have been released to him in order to fully comply with its obligations under the DPA. In this decision notice, the Commissioner has therefore considered only that information which the Department claims is exempt by virtue of sections 27, 36, 40(2) and 41 of the Act.

4.1.3 The Commissioner did attempt to informally resolve this complaint and as a result the Department agreed to disclose to the complainant the information referred to at paragraph 4.2.8 below. However, the complainant having received this information decided not to withdraw his complaint. The Commissioner has decided in any event to proceed to decision notice in this case as a formal record of his findings in relation to the complaint.

## 4.2 The Commissioner's Investigation

- 4.2.1 On 16 September 2005, the Commissioner wrote to the Department, requesting a copy of the Report and a detailed explanation of the Department's reliance on the exemptions, as well as the application of the public interest test. The Commissioner indicated to the Department that he did not consider that the Department had appropriately applied the exemption under section 27(2) of the Act which relates to information which is confidential information obtained from a State other than the United Kingdom or from an international organisation or court.
- 4.2.2 The Commissioner also advised the Department that its refusal notice of 5 March 2005 did not meet the requirements of section 17 of the Act. The Commissioner's view was that, although the Department sought to rely on a number of exemptions, it had not explained which part of the exemption under section 36 of the Act (prejudice to the effective conduct of public affairs) had been applied in relation to the information contained in the Report. Furthermore, in relation to the qualified exemptions relied upon by the Department (namely sections 36 and 27 of the Act) the refusal notice failed to identify the 'public interest' factors or the required balancing exercise. The Commissioner also raised concerns about the Department's application of the public interest test at the internal review stage.
- 4.2.3 In its response of 27 October 2005, the Department confirmed that it would take into account the Commissioner's advice regarding the need for greater detail in refusal notices, on the application of the exemptions and the public interest test when dealing with future requests. The Department also accepted the Commissioner's comments in relation to the internal review. The Department provided the Commissioner with a full copy of the Report, and indicated the information which had been withheld from the complainant. In relation to the Department's reliance on the exemptions, the Department advised that it no longer sought to rely on the section 27(2) exemption and that instead it was seeking to rely on the exemption under section 27(1) of the Act. The Department confirmed that it sought to rely on this exemption on the basis that disclosure of the redacted information into the public domain would in its view damage the established working relationships between the UK and the ROI in relation to ongoing North-South co-operation. The Department provided a full explanation of its reasoning in relying on section 27(1) and set out the factors in favour of maintaining the exemption and in favour of disclosure, arguing in favour of maintaining the exemption in this case.
- 4.2.4 During the course of the investigation, the Department advised the Commissioner which parts of the information it considered exempt under sections 27, 36(2)(b)(ii) and 36(2)(c), in addition to the personal information covered by section 40(2). The Department also provided satisfactory evidence to the Commissioner of the opinion of the qualified person in accordance with section 36(5) of the Act. The Department advised that it no longer sought to rely on the section 41 exemption, although it did consider some of the information to have been provided in



confidence. The Department considered that the personal information of third parties was provided in confidence, but was exempt by virtue of the section 40(2) exemption. While the Commissioner accepted that given the nature of the investigation much of the information contained in the Report was personal data of the relevant parties, the Commissioner also considered whether or not the section 41 exemption was engaged in relation to the statements of witnesses contained in the Report.

- 4.2.5 The Commissioner considered whether or not there was an expectation of confidence in relation to the information which had been provided by third parties in this case. This was a matter which was disputed by the complainant and who was of the view that any obligation of confidence existed during the course of the investigation and did not extend further. The Department's view was that all the witnesses were assured of confidence and would be reluctant in future to provide information in relation to such sensitive issues in a workplace context unless they were assured of confidentiality. The Commissioner obtained a copy of the internal procedures under which part of the investigation was conducted, and found that, although such investigations were to be conducted on a confidential basis, there was no conclusive indication as to how the final Report should be treated. The Commissioner is satisfied that, given the nature of the matters under investigation, the evidence gathered by the investigators was provided in circumstances giving rise to an obligation of confidence. The Commissioner had regard to the case of *Asda Stores v Thompson*<sup>1</sup> in which the Tribunal held that witness statements provided in the context of an employer's investigations remained confidential.
- 4.2.6 The Department had advised the Commissioner that it had permitted both the CEO and the Complainant to view the full Report for the purposes of establishing factual accuracy and had asked the complainant to sign a document relating to the confidential nature of the Report. The Commissioner was provided with a copy of the document which the complainant had signed and noted that there was no express confidentiality clause in that document. However, given that this disclosure was limited to two individuals, and its sole purpose was to ensure accuracy, the Commissioner is satisfied that such disclosure did not amount to a waiver of confidentiality in this case. The Commissioner also considered the representations made to him by the complainant that he had been informed by certain officials that he would obtain a copy of the full Report for his own purposes. The Commissioner was provided with notes of the relevant discussions by both the complainant and the Department in this regard. For the purposes of this decision notice, the Commissioner is not required to decide this issue and in any event he was unable to conclude whether or not such reassurances were in fact made to the complainant because the contents of the notes were ambiguous.

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<sup>1</sup> *Asda Stores Ltd v Thomson* [2002] IRLR 245

- 4.2.6 Although the Report did make reference to various Appendices, these were not provided to the Commissioner at the initial stages of the investigation. The Commissioner did raise this issue with the Department by letter dated 11 April 2006 and was advised that the Report was originally provided to the Department without the Appendices. After some correspondence with the Department, the Commissioner was provided with copies of the Appendices. Having considered the contents of the Report along with the Appendices, the Commissioner was of the view that the complainant's request did in fact relate to both the Report and the Appendices, and that this information was held by the Department at the time of the complainant's request.
- 4.2.7 As a result of the intervention of the Commissioner more of the complainant's personal information was released to him, as well as the terms of reference, the methodology and the conclusions of the investigators in relation to the matters referred to at paragraph 2.1 above. This information was also provided to the Chief Executive.

## **5.0 The Commissioner's Decision**

- 5.1 The complainant has now received all the information contained in the Report and Appendices to which he is entitled under the Data Protection Act. Therefore the question for the Commissioner is the extent to which information relating to the issues identified at 2.1 above ought to be released to the complainant to comply with his request under the Act.
- 5.2 In this decision then the Commissioner has focused on that information which has been withheld by the Department in reliance on sections 27(1), 36(2)(b)(ii) and 36(2)(c), 40(2) and 41 of the Freedom of Information Act.
- 5.2.1 The withheld information consists of the following:
- (i) Statements and opinions expressed by individuals in relation to the Complainant's allegations;*
  - (ii) Biographical and other identifying information relating to officials in Waterways Ireland.*
  - (iii) Findings and conclusions of the investigators in relation to the general allegations concerning the culture, recruitment and promotion practices in Waterways Ireland.*
- 5.2.2 The Commissioner is satisfied that at the time of the complainant's request, information in categories (i) and (ii) above was exempt as follows:
- 5.3 **(i) Statements and opinions expressed by individuals in relation to the complainant's allegations**



- 5.3.1 The Commissioner is satisfied that this information was provided in confidence to the investigators, and is exempt by virtue of section 41 of the Act. The information was obtained from the individuals in the context of an investigation into serious allegations concerning various matters at Waterways Ireland. In this context, the Commissioner is satisfied that the information was provided in circumstances giving rise to an obligation of confidence. At the time of the complainant's request the information was not accessible to the public at large and for that reason the Commissioner is satisfied that it had the necessary quality of confidence. The Commissioner has considered whether the duty of confidentiality has been waived by the Department in providing to the complainant and the Chief Executive sight of the Report in full. The Commissioner does not consider that such disclosure amounted to a waiver of confidentiality in this case, as it was not a disclosure into the public domain. Although not a prerequisite in every case, the Commissioner has considered the issue of detriment which may be required for a breach of confidence to be actionable. The Commissioner is satisfied that in this case given the extent to which the Report and Appendices highlighted personal opinions concerning the conduct of senior individuals in Waterways Ireland, damage could be caused by the release of the information. The Commissioner is therefore satisfied that the disclosure of this information by the Department would constitute an actionable breach of confidence.
- 5.3.2 The Commissioner is satisfied that because this information comprises the personal opinions of individuals relating to the complainant's allegations, it is personal data within the meaning 1(1) of the DPA. The Commissioner has considered whether or not this information would also be exempt by virtue of section 40(2) of the Act, which provides an exemption for the personal information of individuals other than the requester in any case. As the Commissioner is satisfied that this information is personal data, he must then consider whether or not its disclosure into the public domain would contravene any of the data protection principles, or section 10 of the DPA.
- 5.3.3 The first data protection principle requires personal information to be processed fairly and lawfully. Any disclosure of personal information in breach of confidence is unlawful and a breach of the first principle. The individuals concerned were assured that the information would be kept in confidence and had provided their information on that basis. Therefore to disclose such information would also be unfair to the individuals who assisted in the investigation. In light of this, the Commissioner is satisfied that disclosure would breach the first data protection principle and, therefore, the information is exempt from disclosure by virtue of s40(2).
- 5.4 (ii) Biographical and other identifying information relating to officials in Waterways Ireland**
- 5.4.1 Some of the withheld information comprises biographical information including the career history and progression of several senior Waterways

Ireland officials, which is personal information. Although some of this information was in the public domain at the time of the complainant's request, the Commissioner has considered the context in which this information was communicated in the Report. The Commissioner considers that since these individuals were not the focus of the investigation in this case, and were assured of this by the Department, to disclose such information which, in light of the allegations being investigated, might lead to speculation as to the validity of their appointment would be unfair to the individuals concerned. The Commissioner considers that to disclose this information would therefore breach the first data protection principle having regard to the issue of fairness.

### **5.5 (iii) The conclusions of the investigators in relation to the general allegations concerning the culture, recruitment and promotion practices in Waterways Ireland**

5.5.1 At the time of the complainant's request, the detailed conclusions of the investigators in relation to the allegations made by the complainant were not in the public domain, although the investigation had been completed since November 2004.

### **5.6 The section 40 exemption**

5.6.1 The Commissioner has considered whether or not the findings and conclusions of the investigators relating to the complainant's general allegations were personal information relating to the Chief Executive or any of the other senior officials identified in the Report.

5.6.2 The Commissioner is satisfied that information relating to the creation of certain posts and the recruitment and promotion practices in Waterways Ireland is not personal data within the meaning of section 1(i) of the DPA as the information does not have the individual concerned as its focus, rather the findings and conclusions relate to recruitment and promotion practices.

5.6.3 In relation to the investigators' detailed findings and conclusions concerning a culture of bullying and harassment, the Commissioner has considered carefully the actual information contained in the Report. The Commissioner is aware that some of the information relates to the Chief Executive and his role in relation to the culture at Waterways Ireland. The Commissioner considers this information is his personal data. The Commissioner does consider that occupants of senior posts are more likely to be exposed to greater levels of scrutiny and accountability<sup>2</sup>. The Commissioner recognises that the need for accountability is greater in circumstances where as in the case of Waterways Ireland there is no supervisory board.

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<sup>2</sup> The Commissioner's decision the case involving Corby Borough Council Ref: FS50062124

- 5.6.4 The Commissioner is mindful that in this case the nature of the investigation, the detail of the allegations and some of the facts pertinent to the investigation were already in the public domain. There had been, at the date of the complainant's request, a significant amount of publicly expressed concern relating to the matters investigated, the organisation and the actions of the Chief Executive<sup>3</sup>. Given the degree of public concern expressed at the time of the complainant's request and the senior position held by the Chief Executive, it is considered by the Commissioner that disclosure into the public domain would not have been unfair. The Commissioner has considered that in this case the fact and indeed detail of the complainant's request had been public knowledge for some time before the complainant's request was made. The Commissioner has taken into account the fact that unlike the other senior officials, the Chief Executive was the subject of the investigation in this case.
- 5.6.5 The Commissioner is mindful that for such concerns to be raised concerning conduct of the most senior officer in an organisation and for the Report to be completed yet not disclosed in the public domain particularly where some of the allegations are unsubstantiated can be distressing to the individuals concerned and unfair to them.
- 5.6.6 The Commissioner is satisfied that the Department had an appropriate ground for justifying this disclosure under paragraph 6 of schedule 2 to the DPA as follows:

*"6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."*

The Commissioner is of the view therefore that to release the Chief Executive's information regarding the findings and conclusions of the investigators in relation to the issue of a culture of bullying and harassment was not unfair to him in the circumstances. The Commissioner considers that such disclosure would not breach data protection principles and is of the view that this information was not exempt at the time of the complainant's request.

## **5.7 The section 27 exemption**

- 5.7.1 In light of his findings regarding the application of sections 40 and 41, the Commissioner has considered whether the section 27(1)(a) exemption applies to the information referred to at 5.2.1(iii) above which is not otherwise exempt. This exemption applies to information whose

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<sup>3</sup> Extracts from Hansard 2 November 2004 [Column WA407] and 11 November 2004 [Column WA88]

disclosure would, or would be likely to, prejudice relations between the UK and any other State.

- 5.7.2 The Department provided to the Commissioner a number of arguments concerning the impact of disclosure of this information, on relations between the UK and ROI. In particular, the Department had consulted the co-sponsor of Waterways Ireland in relation to disclosure. The Department advised the Commissioner that the DCRGA had indicated its strong concerns that in this case there would be adverse effects of disclosure of the full Report both to the working relations between sponsor departments and within Waterways Ireland itself. The Department considered that serious damage to relationships would occur, affecting both departments' abilities to do business in areas of mutual interest, if the information was disclosed.
- 5.7.3 The Commissioner, in considering whether or not the disclosure of the information into the public domain would be likely to prejudice relations between the UK and ROI, has considered the effect of releasing this remaining information at the time of the complainant's request. The Commissioner has also considered the context of the investigation and the Report. The Commissioner is mindful of the fact that the North-South Bodies exist in international law, and has considered the regional sensitivities in this particular case.
- 5.7.4 The Commissioner is not satisfied that disclosure of this information would be likely to prejudice relations between the UK and the ROI for the following reasons:
- 5.7.5 The Commissioner has applied the test of 'likely to prejudice' as enunciated by Mr Justice Munby in the case of R (on the application of Lord) v Secretary of State for the Home Office<sup>4</sup>, and followed by the Information Tribunal in the case of John Connor Press Associates Limited and The Information Commissioner (Appeal No. EA/2005/0005). In that decision the Information Tribunal interpreted the expression 'likely to prejudice' within the context of the section 43 exemption as meaning that the chance of prejudice being suffered should be more than hypothetical or a remote possibility, there must have been a real and significant risk. The Tribunal in that case indicated that the degree of risk must be such as there 'may very well' be prejudice. The Commissioner considers that the test of 'likely to prejudice' is the same in the context of the section 27 exemption as in the exemption under section 43 of the Act.
- 5.7.6 Having applied this test the Commissioner is not satisfied that disclosure of this information would be likely to prejudice relations between the UK and ROI. The information in question forms only a small amount of the totality of the information contained in the Report, the bulk of which was the personal data of the complainant.

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<sup>4</sup> R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073

- 5.7.7 Furthermore, at the time of the complainant's request the investigation was two years old and the Report had been completed for some six months. The fact that an investigation had been ongoing was public knowledge and this had been reported extensively in Hansard and the local media. As a result the detail of the allegations and scope of the resulting investigation were in the public domain as well as a degree of speculation about the contents of the Report. The complainant and Chief Executive had both been informed of the outcome of the investigation, which had been concluded and the Report finalised, some six months in advance of the request under the Freedom of Information Act.
- 5.7.8 In all the circumstances and given the degree of information already in the public domain concerning the contents of the Report, the Commissioner is not satisfied that there was a real and significant risk of prejudice in this instance. The Commissioner is of the view therefore that in all the circumstances of the case, that the section 27 exemption was not engaged at the time. The Commissioner does not therefore need to consider the public interest.

## **5.8 The section 36 exemption**

- 5.8.1 The Department has provided satisfactory evidence to the Commissioner that it is the reasonable opinion of the Department, as the qualified person, that the information was exempt under section 36(2)(b) (1) and 36(2)(c) of the Act. The Department provided a number of arguments to support its opinion that release of the information other than the complainant's personal data would prejudice the effective conduct of public affairs. In light of the Commissioner's findings in respect of the application of the section 40(2) and section 41 exemption, to the relevant information, the Commissioner has only considered the application of the exemption under section 36(2)(c) of the Act in respect of information at 5.2.1(iii) above.
- 5.8.2 The Commissioner is satisfied that the opinion of the qualified person is reasonable in all the circumstances of this case, and that the exemptions under section 36 are therefore engaged in relation to this information. It then falls to the Commissioner to consider the public interest test arguments in favour of maintaining the exemption, and in favour of disclosure of this information.

### **5.8.3 The public interest test**

The Commissioner recognises that there is a public interest in ensuring such investigations are conducted fairly and impartially and that the degree of confidentiality necessary to conduct such investigations is respected. The Commissioner recognises that the North-South Bodies are unique bodies that exist in international law, the Report was jointly commissioned and the DCRGA has interest in the disclosure of that Report. The Commissioner considers that there is a public interest in maintaining this unique relationship.

- 5.8.4 The Commissioner is mindful of the strong public interest in openness and transparency. The Commissioner also recognises that in all the circumstances of this case, there is a strong public interest in ensuring that complaints relating to the conduct of the most senior officer in a public sector organisation are investigated thoroughly and impartially. This public interest factor is strengthened by the fact that Waterways Ireland does not have an additional layer of accountability beyond the Chief Executive Officer, such as a supervisory board.
- 5.8.5 The Commissioner recognises that there is a public interest in informing the public concerning matters of current debate. At the time of the complainant's request, there was considerable speculation and media attention concerning the outcome of the investigation and the Report itself. In recognition of the potentially damaging effects of prolonged public speculation concerning the contents of the Report, the sponsor departments on 4 April 2005 issued a joint statement confirming a summary of the investigation. However, there is strong public interest in the public being informed of the reasons behind decisions, and the joint statement in this instance does not fully address this aspect of the investigation.
- 5.8.6 The Commissioner has considered the competing public interest arguments in favour of maintaining the exemption and in favour of disclosure of the information referred to at 5.2.1(iii) above. He is satisfied that the balance of the public interest weighed in favour of disclosure of this information at the time of the complainant's request. That is because the public interest in communicating the reasons behind decisions affecting individuals and organisations generally is an essential feature of the Act.

## 6.0 Action Required

As the complainant has received a redacted copy of the Report containing the information referred to at 5.2.1(iii) above, the Commissioner does not require the Department to take any further steps in relation to the complainant's request.

## 7.0 Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:



Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester LE1 6ZX

Tel: 0116 249 4326  
Fax: 0116 249 4131  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 5th day of October 2006

Signed: .....

Graham Smith  
Deputy Commissioner (FOI)

Information Commissioner's Office  
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Wilmslow  
Cheshire SK9 5AF