

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 June 2010

Public Authority: Ministry of Defence
Address: Main Building (Level 1 Zone N)
Whitehall
London
SW1A 2HB

Summary

The complainant requested information held by the Ministry of Defence (MOD) relating to the Smithwick Tribunal. The MOD refused to disclose the information, citing sections 23, 24, 26, 27, 31 and 36. The Commissioner is satisfied that section 23 and section 27(1)(a) have been applied properly in relation to the withheld information. In relation to the information withheld under 27(1)(a) the Commissioner is satisfied that the public interest in favour of maintaining the exemption outweighs the public interest in favour of disclosing the information. Therefore the Commissioner finds that all of the requested information has been properly withheld, and requires no steps to be taken. The Commissioner also recorded a number of procedural breaches in relation to the handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

Background

2. The Smithwick Tribunal was established to examine the murders of two members of the then Royal Ulster Constabulary (the RUC, the Northern

- Ireland police force which later became the Police Service of Northern Ireland). On 20 March 1989 RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan travelled to Dundalk Garda Station, in the Republic of Ireland, for a meeting with a Senior Garda Officer. The RUC officers were murdered as they returned to Northern Ireland after the meeting, and the Provisional IRA subsequently claimed responsibility for these murders.
3. In 2001 the British and Irish Governments appointed Peter Cory, a retired Canadian Supreme Court Judge, to investigate and to report into allegations of collusion between Irish and British security forces and paramilitaries in six instances, including the Breen-Buchanan murders. Judge Cory's appointment arose from the Weston Park Agreement in August 2000 where the Irish and British Governments undertook to appoint a Judge of international standing to carry out such an investigation. The two Governments also undertook that in the event that a public inquiry was recommended, such an inquiry should be established.
 4. Judge Cory produced a report in relation to each case he was asked to consider. In relation to the murders of Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan, Judge Cory recommended that there should be a public inquiry to be conducted by an independent Tribunal.
 5. The Tribunal was established by Resolutions passed by Dáil Éireann ¹ and Seanad Éireann ² on 23 and 24 March 2005 respectively, and by Instrument entitled Tribunals of Inquiry Evidence Act 1921 (Establishment of Tribunal) Instrument 2005. The sole member of the Tribunal is His Honour Mr Justice Smithwick.
 6. The function of the Smithwick Tribunal is to ascertain whether or not there is evidence that there was collusion between a member or members of An Garda Síochána ³ or other employees of the State and paramilitaries in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20 March 1989.
 7. At the date of issuing this Notice, the Smithwick Tribunal was scheduled to commence public hearings in October 2010.

¹ Lower house of the Irish Parliament

² Upper house of the Irish Parliament

³ Irish Police

The Request

8. The Commissioner notes that the request as detailed at paragraph nine below was also submitted in its exact wording to two other public authorities, namely the Northern Ireland Office (NIO) and the Police Service of Northern Ireland (PSNI). The Commissioner is also investigating complaints made in respect of them (under references PSNI - FS50210849 and NIO - FS50210846) which will be subject to separate Decision Notices.
9. On 18 January 2007 the complainant submitted a request to the MOD under section 1(1) of the Act:

“Under the Act, I would like to access all documents held by the MOD in relation to an inquiry which is currently underway in Ireland – The Smithwick Tribunal. The Tribunal has been underway for some months and is investigating claims of collusion between the Irish Police in the town of Dundalk and the provisional IRA which led to the murders of RUC Chief Supt. Harry Breen and Supt. Robert Buchanan on March 20, 1989 in South Armagh”
10. The MOD responded to the complainant on 14 February 2007 confirming that it held the requested information. The MOD advised that the requested information was exempt by virtue of sections 24, 26, 27, 31 and 36, although it did not specify subsections or explain why any of the exemptions were engaged. The MOD explained that, under section 10(3) of the Act it required more time to consider the public interest test and estimated that it required an additional 20 working days to make a final decision.
11. The MOD wrote to the complainant again on 14 March 2007 advising that it would require a further 30 working days to respond. On 27 April 2007 the MOD advised the complainant that it required an additional 40 working days to respond as it was still not in a position to make a decision on the public interest test.
12. On 21 September 2007 the MOD provided a substantive response to the complainant. The MOD maintained that the requested information was exempt under sections 24, 26, 27, 31 and 36 of the Act. The MOD did not explain how these exemptions were engaged, but did provide brief explanations as to why it considered the public interest favoured maintaining the exemptions. The MOD also sought to apply the exemption at section 23 of the Act.

13. The complainant was not satisfied with this response and requested an internal review on 19 October 2007. By August 2008 the complainant had not received a response to his request for an internal review.
14. On 15 January 2009, over a year since it was requested, the MOD completed the internal review. In its letter MOD stated that the original decision not to disclose the information was correct. MOD stated that sections 23, 24, 26 27(1)(a), 31(1)(c) and 36(2)(b)(i) and (ii) were correct and identified subsections for the exemptions which it had not specified in the original response of 21 September 2007. MOD also stated that it was also now also relying on section 42(1) in relation to some of the information and also section 21. The MOD did identify some information that it would disclose subject to redaction under section 40 and stated that it would provide a copy of it to the complainant. The Commissioner became aware during the course of his investigation that the complainant states he did not receive this letter albeit that the MOD state that it was sent. The Commissioner, whilst considering the content of the letter has relied on the letter of 21 September 2007 for the purposes of his investigation in this case.
15. The Commissioner notes that on 12 August 2008 the complainant made his complaint to the Commissioner and that this was 5 months before the MOD said it had completed the internal review. Given the delay with the completion of the internal review at the time of receiving he complaint the Commissioner took the decision to accept the complaint under section 50 of the Act.

The Investigation

Scope of the case

16. On 12 August 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant wished to challenge the MOD's refusal to disclose the information he requested, and also pointed out that at the time of making his complaint to the Commissioner the MOD had not advised him of the outcome of the internal review and so he was unable to be specific about the points he wished to raise against the MOD. However he made the following comments specifically in relation to his complaint about the MOD:

'that 11 months is exceptionally excessive' for conducting an internal review.

Chronology

17. Regrettably due to a heavy workload the Commissioner did not commence his investigation until January 2010.
18. On 8 February 2010 the Commissioner wrote to the MOD and asked for a copy of the withheld information together with a schedule or list of that information to identify which piece of information was being withheld under which exemption and subsection. The Commissioner also asked the MOD to provide additional detail of its handling of the request and the application of the exemptions.
19. On 9 March 2010 the MOD responded to the Commissioner. The MOD provided a copy of the withheld information, marked as requested, and a detailed submission in relation to the exemptions claimed. At this stage the MOD advised the Commissioner that it had in fact conducted an internal review, the outcome of which had been communicated to the complainant on 15 January 2009. The MOD provided the Commissioner with a copy of this correspondence.
20. The internal review letter of 15 January 2009 advised that the MOD had upheld its original decision not to disclose the information. The MOD maintained that sections 23, 24, 26 27(1)(a), 31(1)(c) and 36(2)(b)(i) and (ii) were correct and identified subsections for the exemptions which the MOD had not specified in its original response of 21 September 2007. The MOD also stated that it now sought to rely additionally on section 42(1) in relation to some of the information.
21. The Commissioner notes that the MOD, in its internal review letter of 15 January 2009, accepted that some information could now be disclosed to the complainant. Although the complainant claims that he did not receive this letter, the Commissioner notes that the MOD has now provided a copy of the letter, and a copy of the information in question, to the complainant. Therefore the Commissioner's decision in this case relates only to the remaining withheld information contained in the 62 documents as set out below.

Findings of Fact

22. The MOD holds 62 pieces of information which are relevant to the complainant's request. They include the following:
 - Reports
 - Intelligence summaries

- Emails
- Letters
- Submissions
- Draft documents

Analysis

Exemptions claimed

Application of exemptions to withheld information

23. In its response the MOD told the Commissioner that it was claiming various exemptions in relation to respective documents and that most of the documents had more than one exemption applied:
- All the information withheld under section 23 also attracted sections 27(1)(a), 36(2)(b)(i) and (ii) and section 31(1)(c).
 - All information withheld under section 24 and 26 also attracted section 27(1)(a) and 31(1)(c).
 - All information withheld under section 36(2)(b)(i) and (ii) also attracted section 27(1)(a) and 31(1)(c).
 - That the information withheld where the MOD claimed late reliance on section 42(1), could also attract sections 23, 27, 31 and 36. The MOD told the Commissioner that these were a limited number of documents.
24. The Commissioner has considered the application of the exemptions as detailed above and has looked at the information in conjunction with the MOD's comments on its handling of the request. The Commissioner has first considered section 23 as it is an absolute exemption and was applied to a limited amount of information. The Commissioner has then gone on to consider section 27(1)(a) as the MOD argued that it applied it to all of the withheld information. If the Commissioner finds that any information is not exempt under section 27(1)(a) he will then go on to consider the other exemptions claimed in relation to that information.

Section 23: information supplied by or relating to, bodies dealing with security matters.

25. The Commissioner notes that the MOD applied section 23 to a very limited amount of information which was also considered exempt under sections 27(1)(a), 31(1)(c) and section 36(2)(b)(ii). The Commissioner takes the view that it is appropriate to consider the application of section 23 to this information before going on to consider other exemptions.
26. The parts of section 23 relevant to this request provide that:
- ‘23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
- (3) The bodies referred to in subsection (1) and (2) are –
- (a) the Security Service
 - (b) the Secret Intelligence Service
 - (c) the Government Communications Headquarters
 - (d) the special forces
 - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000
 - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985
 - (g) the Tribunal established under section 5 of the Security Service Act 1989
 - (h) the Tribunal established under section 9 of the Intelligence services Act 1994
 - (i) the Security Vetting Appeals Panel
 - (j) the Security Commission
 - (k) the National Criminal Intelligence Service
 - (l) the Service Authority for the National Criminal Intelligence Service’.
 - (m) the Serious Organised Crime Agency
27. The MOD advised the Commissioner that the information falling within the scope of the request which was exempt under this section did so because it related to a body that falls within section 23(3) of the Act.
28. The exemption at section 23 is class based and absolute, so the MOD was not required to argue that disclosure of the relevant information would have any kind of adverse effect. In the circumstances of this case the level of detail which the Commissioner can include in this Notice about the MOD’s submissions to support the application of this

exemption, and the Commissioner's consideration of these submissions, is very limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself.

29. In this Notice the Commissioner considers that he can only state that in all the circumstances of the case he has concluded that section 23(1) provides a basis upon which to withhold the information requested by the complainant because it relates to one of the bodies listed in section 23(3) of the Act, therefore he finds that the exemption was correctly applied.

Section 27: prejudice to international relations

30. The Commissioner has next considered the exemption at section 27(1)(a), since the MOD has applied it to all of the withheld information.
31. The exemption at section 27(1)(a) applies if its disclosure would, or would be likely to, prejudice international relations between the United Kingdom and any other State. In this case the MOD advised the Commissioner that disclosure of the withheld information would be likely to prejudice relations with the Republic of Ireland.
32. The Commissioner is assisted by the First-tier Tribunal (Information Rights) in the case of Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence (EA/2006/0040) where it commented on the nature of the prejudice which the section 27(1)(a) exemption is designed to protect:

"Prejudice is not defined, but we accept that it imports something of detriment in the sense of impairing relations or interests or their promotion or protection and further we accept that the prejudice must be 'real, actual or of substance'..."

33. In that case the Tribunal went on to say that:

"...prejudice can be real and of substance if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage."

34. The MOD argued that disclosure of the withheld information in this case would be likely to prejudice the UK's relationship with the Smithwick Tribunal. As the Smithwick Tribunal is sponsored by the Irish

government, the MOD was of the view that any damage to its relationship with the Smithwick Tribunal would itself be likely to prejudice its relationship with the Republic of Ireland.

35. The MOD also put forward a number of more detailed and specific arguments to the Commissioner. The Commissioner is mindful of the need to ensure that he does not disclose exempt information in this Notice. However the Commissioner is satisfied that, given the nature of the withheld information, and the arguments put forward by the MOD, that disclosure of the withheld information in this particular case would be likely to make relations more difficult with the Republic of Ireland. Therefore the Commissioner is satisfied that the exemption at section 27(1)(a) is engaged.
36. In finding that the exemption at section 27(1)(a) is engaged, the Commissioner accepts that disclosure of the withheld information would be likely to prejudice relations between the UK and the Republic of Ireland. However, the exemption is qualified so the Commissioner must now consider where the public interest lies. Section 2(2) provides that exempt information must still be disclosed unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosing the information.

Public interest arguments in favour of disclosing the requested information

37. The MOD recognised that disclosure of the requested information could demonstrate to the public the extent of the MOD's cooperation with the Smithwick Tribunal and the consultative process that was undertaken. In particular it would show the public that the MOD had consulted and cooperated with the Smithwick Tribunal.
38. The MOD also appreciated that disclosure of the information could demonstrate the good working relationship between the British and Irish Governments and assist the public's understanding of such political international relationships.
39. The Commissioner is also aware that the murders on 20 March 1989 of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan remain an unsolved crime. Although the murders were one of six cases where serious allegations of collusion were made and which were considered by Justice Judge Cory, this is the only case from which an inquiry was established in the Republic of Ireland. The issue of suspected or alleged Garda collusion with paramilitaries is both politically sensitive and emotive. It is also a live investigation with the Historical Enquiries Team (HET) of the PSNI. There will be significant

public concern that such a crime remains unsolved and particularly in the context of the history of conflict in Northern Ireland such crimes remain at the forefront of people's minds and there is a hunger for information and a need to know that justice will be done. If information relating to the inquiry were disclosed, it may provide public confidence that even such historical crimes remain at the forefront of current investigations focus and have not been forgotten.

40. The Commissioner accepts that the situation in Northern Ireland is unique and that many sections of the community are still seeking to understand who is responsible for many of the unsolved crimes. The Commissioner further understands and accepts that in Northern Ireland the passage of time does not assuage the strength of feeling in relation to such events and that there have been other high profile Tribunals in place such as the Bloody Sunday Tribunal that demonstrate this. The Commissioner recognises that the public need to be able to have confidence and trust in such Tribunals which they may not have felt in the past. The Commissioner understands that disclosing information relating to the Tribunal may provide greater transparency of the formation and workings of the Tribunal and the cooperation with that Tribunal of affected UK government departments and others. Such transparency and understanding could provide confidence and trust in the process for the entire community in Northern Ireland.

Public interest arguments in favour of maintaining the exemption

41. The MOD put forward a number of detailed arguments as to why the public interest in this case favoured maintaining the exemption. The Commissioner notes that the Smithwick Tribunal was established by the Irish government as a result of Judge Cory's report, which itself was commissioned by the UK and Irish governments. Although the murders themselves took place in Northern Ireland, the function of the Smithwick Tribunal is seeking to ascertain whether or not there is evidence that there was collusion between a member or members of An Garda Síochána or other employees of the Irish State and paramilitaries in the murders of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan. This meant that the work of the Smithwick Tribunal was considered sensitive and significant by both governments.
42. The MOD argued that, as the Smithwick Tribunal is in its investigative phase, any disclosure of information or evidence by the MOD into the public domain could pose a real and significant risk to the effectiveness of the Smithwick Tribunal. The MOD further argued that a perceived lack of effectiveness would undoubtedly affect public confidence in the Smithwick Tribunal, which would undermine the justice process

generally. In turn, given that the Tribunal was formed by the Irish Government, if the UK Government was seen as responsible for any disclosure of that information this would have a significant impact on the current and future international relations between the UK and Irish Governments. The MOD was of the view that this would not be in the public interest.

43. In addition, the MOD argued to the Commissioner that disclosure of the requested information could lead to an accusation that the MOD had not cooperated with the Smithwick Tribunal and this could lead to a breakdown of relations between the UK and Irish Governments. Judge Smithwick is the sole member of the Tribunal and it is his responsibility to gather evidence and seek cooperation from those parties having information to assist the Tribunal. Any failure to cooperate or disclosure of information (inadvertent or otherwise) could prejudice either the preliminary work of the Tribunal or the Tribunal itself and as a result would be likely to prejudice UK relations with Ireland. Judge Smithwick's opening statement⁴ is very clear:

'Paragraph II of the resolution of the Houses of the Oireachtas notes the possibility that the Tribunal may have to seek evidence from persons who are not compellable to give evidence. This provision anticipates the possibility that there may be persons or institutions outside the State who may be in a position to assist the Tribunal in its task. As and when such person or bodies are identified by the Tribunal, they will be called on to co-operate. It is to be hoped that such co-operation will be voluntary. However, if a person or agency outside the State declines to co-operate, the terms of reference provide for a mechanism for seeking to ensure such co-operation. Paragraph II provides that the Tribunal can report the fact that an individual or an agency is not co-operating, or not co-operating sufficiently to the Clerk of the Dáil for consideration by the Houses of the Oireachtas in conjunction with the Minister for Justice, Equality and Law Reform, having regard to the public interest'.

Balance of the public interest arguments

44. The Commissioner has taken account of the significant public interest in informing and educating the public about issues of historical and political significance, however sensitive they may be. In this case, given the context of the murder of the RUC officers being allegedly attributed to collusion, the Commissioner appreciates the public

⁴ <http://www.smithwicktribunal.ie/smithwick/HOMEPAGE.html>

interest in disclosing the information. The Commissioner also acknowledges the strength of the public interest in being informed why it has taken this length of time since the murders and the publication of the Cory Report to establish the Smithwick Tribunal and the extent of cooperation between the MOD and the Tribunal itself.

45. The Commissioner is also mindful that the Smithwick Tribunal was established as a public inquiry in the Republic of Ireland, and considers that it is for the Smithwick Tribunal to decide at that point what information is made public and what it would not be appropriate to disclose. However, the Commissioner recognises that at the time of the complainant's request the Smithwick Tribunal had not yet held any public hearings. Indeed, at the time of drafting this Decision Notice the Smithwick Tribunal was still in its investigative phase. Therefore the Commissioner concludes that the Smithwick Tribunal was at the time of the request, and remains now, at a crucial stage which requires protection from unnecessary public scrutiny. The Commissioner is of the view that there would need to be strong public interest arguments in order to override the authority of an inquiry established by another State.
46. The Commissioner also appreciates the importance generally of maintaining good relations with other States, particularly in relation to sensitive and historically difficult issues. The Commissioner is mindful that the Smithwick Tribunal, and the preceding Cory Report, was established as a result of significant negotiation and cooperation between the UK and Irish governments. The Commissioner accepts that disclosure of the withheld information would be likely to make UK-Irish relations more difficult, which would be likely to have a knock-on effect on the political situation in Northern Ireland. In the circumstances of this particular case the Commissioner considers this to be a strong argument in favour of maintaining the exemption at section 27(1)(a).
47. The Commissioner has taken into account that the public Tribunal is the arena for the public to gain an understanding and awareness of what cooperation has been given to it and that it is for the Tribunal to decide at that point what information is made public and what it would not be appropriate to disclose. That is not to say that this is an alternative to the provisions of the Act, however, it certainly weighs in the public interest balance in relation to potentially undermining the Tribunal process. The Commissioner understands that the public interest in knowing the extent to which the MOD has cooperated with the Tribunal adds to the transparency of and public confidence of the process. Given the wider context of the history of the conflict in Northern Ireland, the public concern over collusion by members of An

Garda Síochána in the deaths of RUC officers and allegations of collusion in other high profile deaths which remain very much at the forefront of the Northern Ireland community, any event that would cause conflict between the Irish and UK Governments has the potential to prejudice and put at risk the current and international relationship between the Governments. The Commissioner adds weight to the argument that any disclosure of information prior to the Tribunal could have a real and significant impact on the Tribunal and subsequent relationship between the Governments, affecting international relations.

48. In light of the above, the Commissioner finds that there are considerably strong public interest arguments in favour of maintaining the exemption, and that these far outweigh the public interest in disclosing the withheld information.

Other exemptions claimed by the MOD

49. As the Commissioner is satisfied that section 27(1)(a) has been properly applied to all of the withheld information, the Commissioner has not gone on to consider the other exemptions claimed.

Procedural Requirements

Section 17: refusal notice

50. Where a public authority refuses a request for information it is required under section 17(1) of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. This notice must be provided within the timescale set out in section 10(1), no later than 20 working days following the date the request was received.
51. Section 17(2) provides that a public authority may take additional time to consider the public interest in relation to a qualified exemption, if the authority is satisfied that the exemption is engaged. However the refusal notice issued under section 17(1) must still explain which exemptions are being relied upon, and how they apply to the requested information. Section 17(3) provides that the authority must issue a further notice within a reasonable time, explaining the authority's consideration of the public interest test.
52. The complainant submitted his request to the MOD on 18 January 2007. On 14 February 2007, within the time for complying with section 1(1), the MOD informed the complainant that it held the information, was refusing to disclose it and cited some general

exemptions (without subsections). The MOD informed the complainant that additional time was required to consider the public interest test.

53. Following a number of holding letters, the MOD issued a refusal notice on 21 September 2007, some eight months after the request was first made. This notice also cited section 23 for the first time thereby breaching section 17(1) for failing to cite the exemption within 20 working days.
54. The Commissioner has issued guidance (Awareness Guidance 11) on what he considers a reasonable time to consider the public interest. Generally the Commissioner expects that it should take no longer than 20 working days, and in no case should it take longer than 40 working days. The Commissioner notes that the MOD acknowledged that taking eight months to consider the public interest was unacceptable.
55. The Commissioner finds that the MOD's refusal notice of 14 February 2007 breached 17(1)(b) and (c) as it did not explain fully which exemptions were being relied upon, and how they applied to the withheld information. The Commissioner also finds that the MOD breached section 17(3) in that it failed to provide the complainant with its reasoning in relation to the public interest test within a reasonable time.

The Decision

56. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.
 - The MOD was correct to withhold information in reliance on section 23 and section 27(1)(a) of the Act.
57. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The MOD breached sections 17(1), 17(1)(b) and (c), and 17(3) of the Act in relation to its refusal notice.

Steps Required

58. The Commissioner requires no steps to be taken.

Other matters

59. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

Internal review

60. The complainant requested an internal review on 19 October 2007 but by 12 August 2008 had not received a response and so he made a complaint to the Commissioner. During the course of the Commissioner's investigation the MOD advised that it had in fact completed an internal review on 15 January 2009 and provided a copy of it to the Commissioner. The complainant advised the Commissioner that he did not receive the MOD's letter of 15 January 2009.
61. In any event, the Commissioner notes that the letter of 15 January 2009 indicates that the internal review took 15 months to complete. Part VI of the section 45 Code of Practice comments that internal review procedures encourage a prompt determination of the complaint. The Commissioner has also published guidance in which he advises that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
62. The Commissioner does not consider 15 months an acceptable time to conduct an internal review in any particular case. The Commissioner has had separate discussions with the MOD regarding its case handling procedures, and would expect that steps have been taken to avoid a recurrence of this level of delay.

Right of Appeal

63. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 30th day of June 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 17(1) provides that -

"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."

Section 17(3) provides that -

"A public authority which ... is to any extent relying:

- on a claim that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information, or
- on a claim that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

must either in the notice under section 17(1) or in a separate notice within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, on a claim that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 23 – information provided by, or relating to, security bodies

Section 23(1) provides that –

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

Section 23(3) provides that –

“The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.”

Section 27 – prejudice to international relations

Section 27(1) provides that –

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.