

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 5 June 2014

**Public Authority:** Department for Culture, Arts and Leisure  
**Address:** Causeway Exchange  
1-7 Bedford Street  
Belfast  
BT2 7EG

#### **Decision (including any steps ordered)**

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1. The complainant requested information contained within a court file transferred to the Public Record Office of Northern Ireland (PRONI). The Commissioner's decision is that the public authority failed to respond to the complainant's request within the statutory timescale. As the public authority has now responded the Commissioner does not require any remedial steps to be taken in relation to this request.

#### **Request and response**

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2. The request in this case was made to PRONI. PRONI is an agency of the Department for Culture, Arts and Leisure (DCAL). Therefore DCAL, rather than PRONI, is the public authority under schedule 1 to the FOIA and on whom this decision notice is served.
3. The Commissioner does not have a copy of the original request to PRONI but it is accepted by all parties that the complainant requested court records relating to [named individual] on 2 July 2013.
4. PRONI acknowledged receipt of the request on 3 July 2013. Following further correspondence, PRONI advised the complainant on 3 October 2013 that it would not be issuing a refusal notice and intended to disclose as much information as possible. However PRONI explained that it was required to consult with other authorities before any information could be disclosed.

5. On 10 October 2013 PRONI advised the complainant that it had now scanned the requested information and was preparing to consult the Department of Justice for Northern Ireland (the DOJ) and the Northern Ireland Office (the NIO). On 22 November 2013 PRONI advised the complainant that the consultation process was on hold as it was under review.

## **Scope of the case**

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6. On 12 September 2013 the complainant contacted the Commissioner to complain that PRONI had not yet provided a substantive response to her request, nearly five months after it had been submitted.
7. Under section 50(2)(a) of the FOIA the Commissioner is not required to make a decision if the complainant has not exhausted the public authority's internal review process. However, the complaint made to the Commissioner was that PRONI had failed to respond to the request. The Commissioner also noted that the complainant had corresponded with PRONI a number of times in an effort to obtain a substantive response. Therefore the Commissioner considered it appropriate to proceed to an investigation without requiring the complainant to request a formal internal review.
8. The Commissioner contacted PRONI on 23 September 2013 and 20 February 2014 to remind it of its obligations under the FOIA.
9. On 15 April 2014 PRONI provided a substantive response to the complainant. PRONI disclosed most of the requested information but withheld some under sections 24, 38 and 40 of the FOIA.

## **Reasons for decision**

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### **Section 1: general duty to comply**

#### **Section 10: time for compliance**

10. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not it holds the requested information. This is known as the "duty to confirm or deny". Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued. This is known as the "duty to disclose".
11. Section 10(1) states that the public authority must comply with section 1 promptly and in any event no later than twenty working days after the

date of receipt of the request. The Freedom of Information (Time for Compliance with Request) Regulations 2004 extends the time for compliance, in relation to requests received by PRONI, from twenty working days to thirty working days.

### **Duty to consult the responsible authority**

12. Section 66(2) of the FOIA states that, before deciding whether any exemption applies either in respect of the duty to confirm or deny or the duty to disclose, PRONI must consult the "responsible authority". Section 15(5) sets out how the responsible authority is determined in various scenarios:

*"(c) in the case of a record transferred to the Public Record Office of Northern Ireland from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the appropriate Northern Ireland Minister to be primarily concerned"*.

*"(d) in the case of a record transferred to the Public Record Office of Northern Ireland from a Northern Ireland department, the Northern Ireland Minister who appears to the appropriate Northern Ireland Minister to be primarily concerned"*.

13. The "appropriate Northern Ireland Minister" is defined at section 84 of the FOIA as the Northern Ireland Minister in charge of the Department of Culture, Arts and Leisure for Northern Ireland (the DCAL Minister).
14. The Commissioner understands that the requested information in this case was transferred to PRONI by the Northern Ireland Court Service, prior to the devolution of policing and justice functions from the NIO to the DOJ in April 2010. The Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 transferred the functions of the NI Court Service to the newly-established DOJ. Consequently PRONI advised the Commissioner that the NIO and the DOJ had been identified as the responsible authorities under the FOIA.
15. The FOIA does not prescribe any form and extent of consultation with the responsible authority. However it is clear that PRONI, rather than the responsible authority, is required to reach a decision about whether or not an exemption or exclusion from the duty to confirm or deny applies to the requested information, within the time for compliance (thirty working days).

### **Application of qualified exemptions and the public interest test**

16. Sections 66(3) and 66(4) of the FOIA state that if a qualified exemption is engaged then it will be for the responsible authority, rather than PRONI, to make the public interest decision regarding the duty to

confirm or deny and the duty to disclose. Section 15 of the FOIA provides that in such cases PRONI must send a copy of the request to the responsible authority within the time for compliance (ie thirty working days).

17. The responsible authority is required to inform PRONI of the determination required, including public interest considerations in relation to a qualified exemption, or exclusion from the duty to confirm or deny. There is no statutory time limit but section 15(3) of the FOIA requires that the responsible authority respond to PRONI "within such time as is reasonable in all the circumstances", giving its decision as to the balance of the public interest, in respect of either the duty to confirm or deny or to disclose the information (as relevant), as required by section 66(3) or 66(4).

### **Section 17: refusal notice**

18. Section 17(1) of the FOIA states that if a public authority wishes to refuse a request it must provide the complainant with a refusal notice within the time for compliance. This decision notice must state what exemption is being relied upon and explain why this is the case.
19. Section 17(2) states that the public authority must also explain its consideration of the public interest. A public authority may take additional time to consider the public interest. However it is required to issue a refusal notice that complies with the requirements of section 17(1), and must also contain the following:

*"must indicate that no decision ... has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached"*.
20. The public authority therefore is only permitted to extend the time for compliance in order to consider the public interest test under an exemption which has been applied – and communicated to the applicant – within thirty working days of the request.

### **PRONI's handling of the request**

21. In this case PRONI received the complainant's request on 2 July 2013. The time for compliance runs from the day after the date of receipt, therefore under section 15 of the FOIA PRONI was required to consult with the responsible authority and make a decision as to the application of exemptions no later than 13 August 2013.
22. PRONI has advised the Commissioner that the Minister for Culture, Arts and Leisure determined that the Northern Ireland Office (the NIO) and the Department of Justice (DOJ) were the responsible authorities within

the meaning of section 15(5) of the FOIA. PRONI has further advised that it provided the NIO and DOJ with a copy of the requested information on 29 November 2013, some four months after the request was received.

23. The Commissioner notes that PRONI advised the complainant on 3 October 2013 that it did not intend to issue a refusal notice. It is not clear to the Commissioner whether PRONI sought at that time to rely to any extent on one or more exemptions under the FOIA. As set out at section 17(1) a public authority is obliged to issue a refusal notice in respect of any information it considers exempt from the duty to confirm or deny, or the duty to disclose. However on 15 April 2014 PRONI did in fact issue a refusal notice in respect of part of the requested information. At this point PRONI cited the exemptions at sections 24, 38 and 40 of the FOIA.

### **Conclusion**

24. PRONI issued its refusal notice citing the exemptions applied some eight months after receipt of the request. This clearly exceeds the thirty day time for compliance; therefore the Commissioner must find that PRONI failed to comply with section 17(1) of the FOIA.
25. The Commissioner would remind public authorities that any decision as to the engagement of exemptions must be completed within the time for compliance as explained above. There is no further provision to extend this time for consultation, statutory or otherwise.

## Right of appeal

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26. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**