

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 13 December 2014

Public Authority: Department of Finance and Personnel for Northern Ireland

Address: Rosepark House
Upper Newtownards Road
Belfast
BT4 3NR

Decision (including any steps ordered)

1. The complainant has requested correspondence relating to the extension of the TaxSmart scheme to include rail travel in Northern Ireland. The Department of Finance and Personnel has failed to respond to the request. At the time of issuing this decision notice the Department had not provided the complainant with a substantive response to the request. The Commissioner's decision is therefore that the public authority has failed to respond to the complainant's request within the statutory timescale.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a substantive response to his information request. If the public authority decides to refuse to confirm or deny that the requested information is held, or to withhold any information, then a refusal notice should be issued that complies with the requirements of section 17 of the FOIA.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

4. On 14 September 2014 the complainant requested the following information from DFP:

"...copies of all correspondence related to the extension of the TaxSmart scheme to include rail travel in Northern Ireland.

This request includes specifically any correspondence that has been entered into between the Minister or the Department and HM Treasury in regard to extending this service.

I also request under the same Act, copies of any correspondence which came as a result of my previous email dated 10th July (included below) addressed to the Minister on the same matter."

5. The Department acknowledged receipt of the request on 15 September 2014. The complainant contacted the Department on 10 November 2014 as he had not yet received a substantive response. On 11 November 2014 the Department advised the complainant that his request was "still under consideration".

Scope of the case

6. The complainant contacted the Commissioner on 11 November 2014 to complain that he had not received a response to his request.
7. The Commissioner wrote to the Department on 14 November 2014 to request that it respond to the complainant's request. The Department wrote to the Commissioner on 27 November 2014 and stated that it was unable to provide a substantive response as the request remained under consideration.
8. The Commissioner contacted the Department again on 17 December 2014 to advise that he was drafting a decision notice that would require the Department to respond to the request. The Department acknowledged the Commissioner's correspondence but said it could not estimate when a response would be forthcoming.

Reasons for decision

Section 1: general right of access **Section 10(1): time for compliance**

9. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not the requested information is held, unless an exclusion from this duty applies. 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.
10. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
11. In this case the Department has acknowledged receipt of the request but has provided no substantive response. Specifically the Department has failed to confirm or deny that it holds the requested information, and has neither disclosed the requested information nor provided a valid refusal notice.
12. The Commissioner therefore finds the Department in breach of section 10(1) of the FOIA.

Other matters

13. This is the fourth decision notice issued by the Commissioner in two months relating to the Department. All four decisions recorded the Department's failure to respond to information requests within the statutory time for compliance. The Commissioner expects action to be taken by the Department to address this pattern of non-compliance.

Right of appeal

14. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
16. 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

Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF