

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2020

Public Authority: Invest Northern Ireland
Address: Bedford Square
Bedford Street
Belfast
BT2 7ES

Decision (including any steps ordered)

1. The complainant has requested Invest Northern Ireland (INI) to disclose information relating to an application submitted by N3uroPro Limited for participation in the Propel initiative, information relating to the decision to award a place on the scheme to one of the directors of this company under the company named G Science Ltd and all correspondence relating to this matter between certain named individuals. INI confirmed that some of the requested information is not held. In relation to the recorded information that is held, it disclosed some of this to the complainant and informed the complainant that the remainder is exempt from disclosure under sections 40(2) and 43 of the FOIA.
2. The complainant required the Commissioner to consider the application of section 43 of the FOIA to the withheld information and to determine whether further recorded information is held by Ignite on INI's behalf and between two named individuals.
3. The Commissioner's decision is that INI is entitled to rely on section 43 of the FOIA in this case and that the public interest rests in maintaining this exemption. With regards to whether any further recorded information is held, some was identified and disclosed albeit late. In relation to this the Commissioner has found INI in breach of section 1(1)(b) and 10 of the FOIA. This is because it failed to identify and disclose information, to which the complainant was entitled, within 20 working days of receipt. In terms of whether any further recorded information is held, the Commissioner has decided that on the balance

of probabilities all relevant recorded information has now been identified and disclosed and no further recorded information is held.

4. Overall, therefore, the Commissioner does not require any further action to be taken in relation to this matter.

Request and response

5. On 19 December 2018, the complainant wrote to INI and requested information in the following terms:

“1. This is a request for information pursuant to the Freedom of Information Act 2000 (“Request”).

2. In this Request, references to:

a. “[name redacted]” are to the member of the InvestNI Board who resides at [address redacted];

b. “G-Science Limited” are to the company incorporated under the laws of Northern Ireland on 13 December 2018 with number NI657751;

c. “N3uroPro Limited” are to the company incorporated under the laws of Northern Ireland on 29 October 2018 with number NI656691;

d. “Propel” is to the most recent Propel initiative (starting in January 2019) and the competition to participate in it that started in circa October 2018; and

e. “[name redacted]” are to the director of N3euroPro Limited and G-Science Limited who resides at [address redacted].

3. Please provide electronically by reply to this email address any and all information held by InvestNI that directly or indirectly relates to [name redacted], G-Science Limited, N3uropro Limited and / or [name redacted], each in relation to Propel.

4. Without prejudice to the generality of paragraph 3, please provide electronically by reply to this email address:

a. A list of all companies / other undertakings accepted to participate in the most recent Propel initiative (starting in January 2019);

b. A copy of the N3euroPro Limited application to enter Propel;

c. A copy of the G-Science Limited application to enter Propel;

- d. From the final (presentation) stage of the competition to win a place on Propel that took place on or around the 22 November 2018, the scores attributed to N3uropro Limited;
 - e. From the final (presentation) stage of the competition to win a place on Propel that took place on or around the 22 November 2018, the scores attributed to G-Science Limited;
 - f. From the final (presentation) stage of the competition to win a place on Propel that took place on or around the 22 November 2018, the top 20 scores awarded; and
 - g. A copy of all InvestNI policies and procedures, including terms of appointments for members of the InvestNI Board, relating to conflicts of interest, private interests, anti-bribery and corruption, anti-fraud, conflict with public duty and other related areas.
5. In providing the information requested at paragraph 3, please ensure that you include:
- a. All written correspondence to or from [name redacted] including but not limited to via the email address [address redacted] and phone number [redacted] – see the [Information Commissioner guidance on official information held in private email accounts \(document 20170309 Version: 1.2\)](#) that clarifies this information is within scope of the Freedom of Information Act 2000;
 - b. All written correspondence to or from [email address redacted];
 - c. All written correspondence to or from [email address redacted]; and
 - d. All written information held by InvestNI that directly or indirectly relates to [name redacted] or [name redacted], each in relation to Propel, including (but not limited to) correspondence to or from [name redacted] of InvestNI, [name redacted] of Ignite, [name redacted] of InvestNI and [name redacted] of IgniteNI ([email address redacted]).”
6. INI responded on 11 January 2019. It confirmed that it does not hold some of the requested information. For the information that it does hold it either disclosed it to the complainant or informed the complainant that it was being withheld under sections 40(2) and 43 of the FOIA.
7. The complainant requested an internal review on 21 January 2019.
8. INI completed the internal review and notified the complainant of its findings on 1 March 2019. It disclosed some further information to the complainant but overall it remained of the opinion that section 40(2) and 43 of the FOIA applied.

Scope of the case

9. The complainant contacted the Commissioner on 29 July 2019 to complain about the way her request for information had been handled.
10. The Commissioner contacted the complainant at the outset and agreed the scope of her investigation. It was agreed that she would consider INI's application of section 43 of the FOIA to the withheld information, consider whether INI holds any recorded information between two named individuals in the request for the purposes of the FOIA and establish whether Ignite holds any further recorded information on behalf of INI falling within the scope of the request. No complaint was made about INI's application of section 40(2) of the FOIA (personal data). This was therefore considered outside the scope of this investigation.

Reasons for decision

Section 43 – commercial interests

11. Section 43 of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the public authority or a third party.
12. It is a qualified exemption. So in addition to demonstrating that the exemption is engaged, a public authority needs to consider the public interest test. It should consider the arguments for and against disclosure and unless it is going to disclose the information, demonstrate how the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.
13. INI confirmed that the withheld information relates to an application to participate in the Propel Pre-Accelerator programme (a programme that aims to support ambitious entrepreneurs turn a business idea into a world class company). Ignite assessed an application form submitted from a start-up company called N3uroPro Limited. The company was originally unsuccessful but was awarded a place after another company left the scheme. Before commencement of the programme the partners or directors of N3uroPro Limited agreed to part ways. Ignite decided to allow one of the directors to participate in the programme. As part of the break from N3uroPro Limited, the director established G Science Ltd and it was through that, that the former director of N3uroPro Limited now director of G Science Ltd took their part on the programme.
14. INI informed the Commissioner that it consulted with G Science Ltd about this request and the potential disclosure of the withheld information. It pointed out that it had not consulted the other 20

programme participants directly, considering the concerns raised by G Science Ltd will be reflective of the other participants and because of the resource that would be required in order to do that.

15. INI stated that disclosure of the application form submitted would be likely to prejudice the commercial interests of G Science Ltd. Although the application form was submitted by N3uroPro Limited the director of G Science Ltd claimed ownership of the proprietary information within the form when they parted ways with the other director of N3uroPro Limited, formed G Science Ltd and took their place on the programme.
16. It also stated that disclosure of the associated scores would be likely to damage the commercial interests of G Science Ltd too. It argued that the aim of the programme is to support ambitious entrepreneurs turn a business idea into a world class company. By its nature this will involve the exploration of the viability and commercial potential of business ideas that are of commercial value to applicants such as the owner of G Science Ltd. It stated that having taken proprietary ownership over its contents on parting from their initial business partner, the application contains details of the directors' future plans in conducting commercial activities.
17. It went on to explain that participants of the programme are usually early stage technology companies that have a tendency to seek to attract venture capital investment. It argued that to do this, the proprietary information used in developing ideas must stay private. It stated that it is these intangible and proprietary assets that enable a company to distinguish itself from competitors. These assets are typically the foundation upon which a company is built and they would be very useful to competitors in the same field.
18. INI said that disclosure would give competitors an insight into G Science Ltd's business and would be likely to prejudice G Science Ltd's ability to participate in commercial activities, particularly the purchasing and selling of goods and services and the ability to attract potential investors on the basis of the quality of its business idea. Disclosure would be likely to provide an unfair advantage to its competitors and could therefore result in commercial detriment and ultimately financial loss for G Science Ltd.
19. INI said that competitors could use the ideas generated by the director for their own commercial gain, again placing G Science Ltd at a disadvantage.
20. With regards to the scores attributed to each company, including G Science Ltd, INI advised that they consist of Ignite's judgement decisions based on the information provided by each applicant during

the application process. It said that the scoring is a panel's critical view of the potential of each application, particularly in relation to the business ideas and plans within it.

21. INI stated that this has commercial value to the applicants as reputation is an important asset of any business or brand. It argued that this is particularly relevant to participants of the programme, who are early stage technology companies that tend to seek to attract venture capital investment. INI confirmed that the disclosure of a professional assessment of the viability of a project can be of potential detriment to the commercial reputation of both a project and a company/individual applicant. It explained that the applications are awarded scores in a number of areas such as 'Product/Service', 'Growth/Market Opp', 'Innovation' and this can be seen as a critique of their business ideas. A low score in one of these areas may be interpreted as specified business weaknesses and would be likely to place the applicants at a disadvantage whilst engaging with potential investors at both this stage and in their future growth. Likewise, it said, a median score when compared with higher scores may unjustly lead to inaccurate comparisons with their business ventures and would be likely to place applicants at a disadvantage whilst competing for and engaging with potential investors at both this stage and in their future growth.
22. The Commissioner has reviewed the withheld information and considered the complainant's and INI's submissions. The complainant has raised the point that G Science Ltd's commercial interests are of no relevance here, as it was N3uroPro Limited that submitted the withheld information and this is a separate legal entity. While the Commissioner accepts that the companies are separate legal entities it is clear that the director on G Science Ltd was co-director of N3uroPro Limited and contributed to the application that was put forward. INI has also said that when the directors of N3uroPro Limited parted ways, the director of G Science Ltd (the participant in the scheme) took proprietary ownership of the application and its contents. The Commissioner therefore considers it is right and appropriate to consider the commercial interests of G Science Ltd.
23. INI has explained how the information would be likely to be beneficial to G Science Ltd's competitors and how the scoring given to the applicants by Ignite could affect their ability to compete within the market and secure investment and influence those they negotiate with. The Commissioner is therefore satisfied that section 43 of the FOIA applies.

Public interest test

24. In terms of the public interest test, INI confirmed that it recognised the public interest in openness and transparency and in disclosing

information which will enable the public to understand more clearly its decision making processes and how public funds are utilised. However, it said that this should not be at the detriment of the entrepreneurs that engage with the programmes. It stated that it is in the public interest to maintain fairness in competition, it is therefore important and necessary to protect truly sensitive commercial information. INI advised that it is not in the wider interests of the public to disadvantage third parties commercially and to undermine their business ideas and expertise.

25. It stated that it had sought to meet the public interest in disclosure by releasing the standard questions and the areas on which applicants are scored. It argued that this allows it to be open and transparent about the process but does not place any specific company or individual at risk of commercial detriment. It argued that the disclosure of all successful participants on the scheme also adds to this transparency and accountability.
26. The complainant believes there are specific public interest arguments in favour of disclosure in this case. She is aware that the director of G Science Ltd and participant in the scheme is known to one of the INI Board members and believes it was unfair to allow this individual to continue on the scheme under a new business. She stated that the place was ultimately awarded to N3uroPro Limited and G Science Ltd did not take part in the competition process. She stated that the director of G Science Ltd was assisted by Ignite in setting up a new business to enable him to continue with the programme and they have been in receipt of tens of thousands of pounds of public funds.
27. The Commissioner put these arguments to INI. It stated that it had no concerns about the manner in which this place was awarded and does not agree with the complainant that in some way the director of G Science Ltd retained a place on the scheme inappropriately. It stated that it was happy with the decision making process here and therefore did not agree that the public interest rested in disclosure.
28. The Commissioner accepts there is a public interest in openness and transparency and in allowing members of the public access to information to enable them to understand more clearly why particular decisions have been made. She acknowledges that the scheme operates using public funds and there is a public interest in ensuring that all applications to the scheme are assessed fairly and without any bias.
29. However, in this case the Commissioner considers the public interest rests in maintaining the exemption. She agrees with INI that it is not in the public interest to prejudice the commercial interests of third parties and to place a third party at a commercial disadvantage as a result of disclosure. There is a public interest in ensuring that a fair and unbiased

commercial environment is maintained and in protecting the ability of third parties to compete fairly for goods, services and investment in the marketplace.

30. It is also noted in this case that INI has explained to the complainant how N3uroPro Limited came to gain a place of the scheme and then how this place was effectively taken up by one of the directors of that company under a new company. It has also acknowledged that the director of G Science Ltd and one of the INI Board members are known to each other; it has not hidden this and explained how in reality it is often the case that members of the public or third parties are known to Board members or employees of public authorities. It has confirmed that it is happy with the decision making that took place in this case and is satisfied that nothing untoward has occurred as the complainant seems to suggest. The Commissioner does not see how the disclosure of the application form would aid the complainant or the wider public in understanding this decision making any further. The Commissioner may see how the scores may provide more insight into how this company was scored when compared with others. But the Commissioner considers the public interest rests in maintaining the exemption for this information (as stated above) due to the likely prejudice disclosure could cause to the commercial interests of the companies awarded a place.
31. The Commissioner weighed up the public interest arguments for and against disclosure and she has decided in this case that the public interest rests in maintaining the exemption.

Is any further recorded information held between two named individuals in the request?

32. During the Commissioner's investigation INI reconsidered the request, the Commissioner's guidance on what information is covered by the FOIA, the need to consider private email accounts and other media devices and asked the named individual to carry out further searches to see whether any further recorded information is held. These additional enquiries resulted in further emails being identified. INI proceeded to disclose these additional communications in full to the complainant on 8 January 2020.
33. The complainant raised further concerns on receipt of these additional disclosures that INI and the named individual had not searched mobile phones and WhatsApp messages.
34. The Commissioner referred INI to her guidance again and advised INI that all media devices must be checked and private email accounts to ensure that all recorded information is identified. INI responded and confirmed that the named individual was asked to search all private

email accounts and mobile devices for any recorded information. Everything that is held has now been disclosed. There is no recorded information being withheld under any exemption or information which is held which INI considers falls outside the scope of FOIA. All that is held has been considered caught by the FOIA and all has been disclosed.

35. The Commissioner is satisfied that INI has carried out sufficient searches and has fully understood now what information will be covered by FOIA. It has confirmed that the named individual searched all email accounts both private and work related and searched their mobile phone. All information that is held has been disclosed in full.
36. The Commissioner has therefore concluded that on the balance of probabilities no further recorded information is held.

Is any further recorded information held by Ignite on behalf of INI?

37. INI explained that it had determined day to day correspondence between Ignite and participants of the programme and internally between its employees would fall outside the scope of FOIA as information not held by INI. It confirmed that this initial decision was taken based on the Commissioner's guidance and following a review of the terms and conditions of the contract with Ignite.
38. However on further consideration and in line with its general approach to openness and transparency it decided to treat all information held by Ignite as falling within the scope of the FOIA and therefore this request. Information was therefore disclosed.
39. Towards the end of the Commissioner's investigation the complainant highlighted what she thought was a gap in the correspondence. The Commissioner asked INI to comment on this and ensure that all recorded information had been identified.
40. INI responded saying that it did hold the correspondence suggested by the complainant but again thought that it fell outside the scope of the FOIA. It stated that this was internal correspondence within Ignite and it would not usually wish to see day to day correspondence relating to the programme. However, it stated that it would be willing to disclose this information to the complainant, again in the interests of openness and transparency. INI therefore proceeded to disclose this information to the complainant on 31 January 2020.
41. The Commissioner is satisfied that on the balance of probabilities no further recorded information is held. INI has assured the Commissioner that regardless of whether it has reservations over whether some of the information involving Ignite falls within scope of the FOIA, it has disclosed everything that is held in order to promote openness and

transparency surrounding the programme and the two companies involved.

Procedural breaches

42. With regards to the late identification and disclosure of information falling within the scope of the request, the Commissioner has found INI in breach of section 1(1)(b) and 10 of the FOIA. This is because INI failed to communicate recorded information it holds, to which the complainant was entitled, within 20 working days of the receipt of her request.

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: 0300 1234504

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

Samantha Coward
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