

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2021

Public Authority: Department for Communities (Northern Ireland)

Address: Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant requested information relating to a review of the Charity Commission for Northern Ireland. The Department for Communities NI ("the DfC") claimed that the request was not valid as the requestor had not used his real name. It therefore refused to comply with the request.
2. The Commissioner's decision is that the DfC has failed to demonstrate that the request was not valid and, on the balance of probabilities, she considers that it is valid. As the DfC has failed to respond to a valid request within 20 working days it has therefore breached section 10 of the FOIA.
3. The Commissioner requires the DfC to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The DfC 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

5. On 25 October 2020, the complainant wrote to the DfC and requested information in the following terms:

- "1) Please provide a copy of the review completed on the Charity Commission for Northern Ireland by Mr [Jonathan] Baume*
- 2) Please provide details of the tender process completed for this review*
- 3) Please detail the the final cost of the review including details of all payments to any and all parties involved*
- 4) Please detail each individual person or organisation that was consulted or questioned or contributed to the review*
- 5) Please detail all correspondence between the parties involved in this review (including, but not limited to, Mr Baume, the Executive Office, the Department for Communities, the Northern Ireland Assembly, any MLA)*
- 6) Please provide all correspondence which in any way referred to a question on or decision to exclude the Charity Commission and/or its staff from contributing to the report*
- 7) Please provide the terms of reference for the review*
- 8) Please provide all documentation pertaining to how Mr Baume assessed the enquiries (or inquiries) conducted by the Charity Commission without contacting them*
- 9) Please provide a copy of all correspondence to the Minister for the Department for Communities and the Head of the NICS regarding the review*
- 10) Please provide all documentation relating to the rationale behind the decisions made on which third parties were asked to contribute to the report*
- 11) Please provide the declaration of interest signed or any details of conflict of interest from all parties involved in this review.*

"For all points above where I have mentioned review, please substitute the word review for report or assessment if that is more appropriate."

6. On 20 November 2020, the DfC issued a holding response. It noted that the ongoing pandemic was delaying responses to information requests and promised to respond as soon as it could. The DfC did not indicate that it had any concerns about the validity of the request. When a response had failed to materialise, the complainant contacted the DfC again on 29 December 2020 to chase a response.
7. On 11 January 2021, the DfC responded. It informed the complainant that it did not consider that his request was valid as it believed that the request had been made using a pseudonym. It outlined several arguments as to why it believed this to be the case.

Scope of the case

8. The complainant initially contacted the Commissioner on 7 January 2021 to complain about the failure, by the DfC, to respond to the request.
9. Before the Commissioner had had the opportunity to begin working on the complaint, the DfC then issued its further response declaring the request to be invalid. The complainant then asked the Commissioner to deal with this new matter about the validity of the request.
10. The Commissioner contacted the DfC on 29 January 2021. She noted that the DfC had not provided convincing justification for believing that the complainant was using a pseudonym and asked it to either respond to the request or provide proper arguments as to why the request was not valid.
11. The DfC responded to the Commissioner on 12 February 2021. It maintained its position that the request was not valid and expanded on its justification.
12. The Commissioner then contacted the complainant to invite him to provide her with proof of his identity in order that the matter could be put beyond doubt. The complainant declined to do so and asked the Commissioner to issue a decision notice.
13. The scope of this notice and the following analysis is to consider whether the DfC was obliged to respond to the request.

Reasons for decision

14. Section 1(1) of the FOIA states 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.*

15. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

16. For a request to be valid under section 8(1)(b) of the FOIA, the Commissioner considers that the person making the request must provide their full real name – or at least enough of their name to enable the staff of the public authority to identify the requestor or distinguish them from other individuals with similar names.

17. The Commissioner notes that the complainant's original correspondence was signed off with only his first name – which would have made the request invalid immediately. However, she also notes that the email header contained both a first name and surname. She is therefore satisfied that the complainant provide a full name when making his request.

18. When asked to explain its rationale for believing that the request was invalid, the DfC explained that:

"The Department at that stage undertook an Internet search of the requester's name solely to establish whether the requester was a journalist so that the Department's Press Office could be alerted to potential media reports.

"The Internet search revealed two social media profiles with the name [redacted]. The LinkedIn article did not appear to be genuine and the Department found no evidence of such a role in the NICS.

"Additionally the Twitter account quotes "Master of Pseudonym"...

"There were also numerous references and articles in relation to '[redacted]' as a well-known Irish satirist famous for his use of

pseudonyms throughout his career in relation to his role in the Irish Civil Service.

"Virtually all search results in relation to '[redacted]' relate directly to the use of pseudonyms; none of which appear to relate to any natural person of this name.

"The Department therefore considered it had a reasonable doubt regarding the identity of the requester."

19. In considering the DfC's position, the Commissioner has had regard to her own guidance:

"If the requester has used a pseudonym then their request will be invalid.

In some cases it will be immediately obvious that a pseudonym is being used, for example where the request has been signed in the name of a famous fictional character, such as 'Mickey Mouse', an inanimate object, like 'Mirrorball', or by location, for instance as 'disgruntled of Stockport'. Pun names such as Sue D Nym may also fall into this category.

"However, if the name provided is not an obvious pseudonym and the public authority has no reason to believe that a pseudonym is being used, the authority should just accept the name provided at face value.

"Whilst this may mean that some pseudonymous requests will slip through the net, we would not want to see a situation where authorities routinely carry out checks on requesters' identities. The Act provides a public right to information, not a right limited to certain individuals."¹

20. The Commissioner considers that the burden of proof should lie with the public authority in demonstrating that a request is not valid. To do otherwise would be inconsistent with the aims and principles of information rights legislation. In determining whether the DfC has made its case, she has reached her decision on the basis of the civil standard of the balance of probabilities (ie. is it more likely than not that the request was invalid?)

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

21. The DfC's case that the request has been made using a pseudonym is based on two main lines of argument:
 - That the requestor shares a name with a person linked to the use of pseudonyms
 - That no reliable social media evidence exists of a real person with that name.
22. In relation to the first argument, the Commissioner considers that the name in question is not an obvious attempt to disguise the requestor's identity (such as "Sue D Nym" or "A Nonymous").
23. The DfC has not attempted to argue that it is a name such as "Mr Smith" which is so common that it would be difficult to trace to a particular individual – and even if it had, it would be unfair to the many Mr Smiths if they were to have their information requests summarily refused.
24. The DfC's case is linked to the fact that an Irish satirist wrote articles for publication under different names. Whilst the Commissioner accepts that this is true she also notes that the complainant shares a name with the satirist's real name and not one of the pseudonyms under which he wrote.
25. Underpinning the argument that the sharing of a name could not be a coincidence is the DfC's second argument – that no valid social media profile exists in the complainant's name.
26. The Commissioner accepts that the LinkedIn account and one of the Twitter accounts in the same name as the complainant appear to be fake or parody accounts. Although she notes that the Twitter account in question last tweeted more than ten years ago – suggesting it is no longer active.
27. However the Commissioner also notes that the DfC has produced no evidence to link the complainant to either account. She also notes that there does appear to be another Twitter account in the same name – although it does not appear to have tweeted yet.
28. Furthermore, whilst social media accounts are ubiquitous, the Commissioner is not convinced by the implication of the DfC's argument that a person without a social media account does not exist or, at least, should be treated with great suspicion. There remains a substantial number of people who, be it for generational, technological or privacy-conscious reasons, do not wish to have social media accounts. Given how easy it is to create fake but realistic social media accounts, the Commissioner can give very little credence to either the mere existence

or the mere absence, of a social media profile in confirming a person's identity.

29. Whilst the Commissioner notes that the complainant could have put the matter beyond doubt by providing confirmation of his identity, she nevertheless recognises that he is under no obligation to do so. It is the DfC's responsibility to demonstrate that the request was not valid and its evidence does not go beyond the circumstantial.
30. The Commissioner also notes that after receiving the complainant's request, but before it refused it, the DfC accepted and responded to another request submitted by the complainant – without raising any concerns about his identity.
31. To allow a public authority to begin invalidating information requests because the people submitting them happen to share names with satirists would risk disenfranchising significant groups or people from their rights of access to information solely because of their name. As referred to in her guidance, the Commissioner does accept that such an approach will inevitably lead to some pseudonymous requests being responded to. In her view, this is still the correct balance to strike and minimises the chances of valid requests being refused.
32. As the request was one which was valid, the DfC's section 1 obligations were engaged.
33. Section 10 of the FOIA states that a public authority must comply with its obligations under section 1 of the FOIA "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
34. As it has failed to issue a response to the request within 20 working days, the DfC has breached section 10 of the FOIA.

Other matters

35. The Commissioner notes that this situation came about because the DfC took it upon itself to screen the request to determine if the requestor was a journalist. The DfC has assured the Commissioner that this was done solely so that its press office could be alerted to potential press enquiries arising out of any response.
36. The Commissioner reminds the DfC that responses provided under the FOIA should, in most circumstances, be motive- and applicant-blind. The fact that a particular requestor may be a journalist should not affect either the content of a response or the speed with which it is provided.

Right of appeal

37. 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

38. 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.
39. 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

Pamela Clements
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