

## **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 St  
Belfast  
BY1 7FB

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

---

1. The complainant has requested a file transferred to the Public Records Office of Northern Ireland (PRONI). At the time of issuing this decision notice PRONI had not provided the complainant with a substantive response to the request. The Commissioner's decision is 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:
  - Respond to the request, either by providing the requested information or by issuing a refusal notice.
3. The public authority must take this step 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. 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.
5. On 2 October 2013 the complainant requested the coroner's inquest file relating to the murder of Rev Robert Bradford MP. On 3 October 2013 the complainant confirmed that he was making his request under the FOIA.
6. On 12 November 2013 PRONI advised the complainant that it would be unable to meet the statutory time for compliance as it required further time to consult with third parties, including the Department of Justice (the DOJ).

## **Scope of the case**

---

7. On 19 November 2013 the complainant contacted the Commissioner to complain that PRONI had not yet provided a substantive response to his request.
8. 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, therefore the Commissioner considered it appropriate to proceed to an investigation without requiring the complainant to request a formal internal review..
9. On 8 January 2014 PRONI confirmed to the complainant that it had not yet commenced the consultation process. PRONI was at this stage unable to provide an estimate as to when a substantive response may be issued to the complainant.
10. The Commissioner contacted PRONI on 14 January 2014 to remind it of its obligations under the FOIA. However, at the time of issuing this decision notice PRONI had still not provided a substantive response to the complainant.
11. Following further correspondence, on 8 May 2014 PRONI advised the Commissioner that it was awaiting a response from the DOJ and the Northern Ireland Office (the NIO).

## Reasons for decision

---

### **Section 1: general duty to comply** **Section 10: time for compliance**

12. 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".
13. 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**

14. 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".*

15. 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).
16. 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.

17. 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**

18. 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).
19. 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**

20. 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.
21. 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".*

22. 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**

23. PRONI received the complainant's request on 2 October 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 12 November 2013.
24. PRONI has advised the Commissioner that the Minister for Culture, Arts and Leisure determined that the NIO and the 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, but at the date of issuing this decision notice had not received their respective responses.

### **Conclusion**

25. At the time of issuing this decision notice PRONI had not issued a substantive response to the complainant, some seven months after receipt of the request. This clearly exceeds the thirty days allowed for compliance; therefore the Commissioner must find that PRONI has failed to comply with section 17(1) of the FOIA.
26. 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

---

27. 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)

28. 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.
29. 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**