

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 17 December 2007

Public Authority: The Assembly Ombudsman for Northern Ireland
Address: 33 Wellington Place
Belfast
BT1 6HN

Summary

The complainant wrote to the Assembly Ombudsman for Northern Ireland (the 'Assembly Ombudsman') to request copies of correspondence between that office and the Northern Ireland Water Service in relation to water meters and water wastage. The Assembly Ombudsman claimed that the information it held was exempt under section 44 of the Act which provides for an exemption where disclosure is prohibited under any other enactment. The relevant statutory prohibition is the Ombudsman (Northern Ireland) Order 1996. The Information Commissioner has considered the complaint and has found that the information was exempt and that the Assembly Ombudsman applied section 44 of the Act correctly.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

The Request

2. On 19 July 2007 the complainant wrote to the Assembly Ombudsman to request the following information:

"...would you be so kind as to let me have all correspondence between yourselves and Water Service from 1992 to 2006. In regret [sic] to water meter and water wastage."
3. The Assembly Ombudsman responded to the complainant on 30 July 2007. It advised the complainant that the information he requested was exempt from

disclosure under section 44 of the Act. This exemption applies if the disclosure of information is prohibited by law, and the Assembly Ombudsman explained that the relevant statutory prohibition was section Article 19 of The Ombudsman (Northern Ireland) Order 1996 (the 'Order'). The text of Article 19 of the Order is set out in the legal annex to this Notice, see page 6. The Assembly Ombudsman explained that under this Order it is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, except in very limited circumstances. These exceptions are also set out in the legal annex. However the Assembly Ombudsman advised that none of these exceptions applied in this case, and therefore the information could not be disclosed to the complainant.

4. The complainant was dissatisfied with this response, and requested an internal review on 20 August 2007.
5. The Assembly Ombudsman responded to the complainant on 5 September 2007, advising that it had now reconsidered all the information in this case. However, the Assembly Ombudsman remained of the view that disclosure of the requested information was prohibited by Article 19 of the Order. Therefore the Assembly Ombudsman upheld its original decision to withhold the information in reliance on the exemption under section 44 of the Act.

The Investigation

Scope of the case

6. On 11 September 2007 the complainant contacted the Commissioner to appeal against the Assembly Ombudsman's refusal to provide him with the information he requested. The complainant specifically asked the Commissioner to consider all aspects of his correspondence with the Assembly Ombudsman, because he had asked the Assembly Ombudsman to investigate a complaint he submitted about the Water Service. The complainant alleged that the Assembly Ombudsman had failed to deal with his complaint, and asked the Commissioner to investigate this matter.
7. The complainant has advised the Commissioner that he has been involved in an ongoing dispute with the Water Service for a number of years. The Water Service was an executive agency of the Department for Regional Development, but became a government-owned company named NI Water in 2006.
8. The Commissioner advised the complainant that he could only consider the way the Assembly Ombudsman handled his information request under the Act. The Commissioner can not comment on the Assembly Ombudsman's investigation of complaints.
9. The Commissioner also notes that the complainant has made a subject access request to the Assembly Ombudsman under section 7 of the Data Protection Act 1998 (the 'DPA'). The Assembly Ombudsman has provided the complainant with

a copy of his personal information in compliance with the DPA, and this does not form part of the complaint in this case. Therefore the Commissioner's decision in this case relates solely to the information withheld from the complainant under the Act.

Chronology

10. On 19 November 2007 the Commissioner wrote to the Assembly Ombudsman to advise it of the complaint. The Commissioner noted that Article 19 of the Order related only to information obtained by the Assembly Ombudsman, not information generated by the authority. The Commissioner therefore asked the Assembly Ombudsman to clarify the nature of the information it was seeking to withhold. In particular the Commissioner asked the Assembly Ombudsman whether it held any relevant correspondence with the Water Service which was not obtained in connection with an investigation.
11. The Assembly Ombudsman responded to the Commissioner on 26 November 2007. It confirmed that the withheld information comprised only information obtained in relation to an investigation. It also clarified that information generated by the Assembly Ombudsman had been provided to the complainant as part of his subject access request.
12. The Assembly Ombudsman also confirmed to the Commissioner that it did not hold any correspondence with the Water Service, on the subject of water metering and water wastage, that did not relate to an investigation. Therefore the Assembly Ombudsman was of the view that it held no other information which might fall within the scope of the complainant's request.

Analysis

Exemption: section 44

13. The Commissioner recognises that Article 19 of The Ombudsman (Northern Ireland) Order 1996 acts as a statutory prohibition on the disclosure of information obtained in the course of, or for the purposes of, an investigation by the Assembly Ombudsman. The Commissioner is also satisfied that responding to a freedom of information request is not one of the reasons for disclosure provided for in sub-sections a) – e) of Article 19(1).
14. The Commissioner is aware that the complainant made a request for specific information, namely correspondence between the Assembly Ombudsman and the Water Service between 1992 and 2006 on the subject of water metering and water wastage. The Commissioner has investigated what information is actually held by the Assembly Ombudsman which is relevant to the complainant's request. The Commissioner also notes that the Assembly Ombudsman has also provided the complainant with information which constitutes his personal data.

15. In any event all of the withheld information this case was obtained by the Assembly Ombudsman in connection with an investigation. Therefore the Commissioner is satisfied that the withheld information does fall under the statutory prohibition under Article 19 of the Order.
16. As the withheld information does fall under a statutory prohibition on disclosure, the Commissioner is satisfied that it is exempt under section 44 of the Act. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.

The Decision

17. The Commissioner's decision is that the Assembly Ombudsman dealt with the complainant's request in accordance with the requirements of the Act. The Commissioner finds that the Assembly Ombudsman correctly refused to disclose the information under section 44 of the Act

Steps Required

18. The Commissioner requires no steps to be taken.

Right of Appeal

19. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 17th day of December 2007

Signed

**Marie Anderson
Assistant Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

(1) 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.

2. **Section 44** provides that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

3. **Article 19 of The Ombudsman (Northern Ireland) Order 1996** provides that:

(1) Information obtained by the Ombudsman or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except for the purposes of -

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman or any of his officers by virtue of this Order;
- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in sub-paragraphs (b) and (c); or
- (e) any proceedings under Article 15.