

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 23 June 2010**

**Public Authority:** Northern Ireland Office  
**Address:** 11 Millbank  
London  
SW1P 4PN

### Summary

---

The complainant requested information relating to the St Andrews Conference in 2006. The Northern Ireland Office refused to disclose the requested information in reliance on section 36(2)(a)(ii) and section 36(2)(c) of the Act. The Commissioner finds that the exemptions are engaged, and that the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. The Commissioner also recorded a number of procedural breaches.

### 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.

### Background

---

2. The "St Andrews Conference" was a three-day series of talks between the British and Irish governments and the main Northern Ireland political parties in October 2006. The talks aimed to reach agreement on the restoration of the political institutions in Northern Ireland<sup>1</sup>. The Northern Ireland (St Andrews Agreement) Act 2006 implemented the agreement reached at the talks.

---

<sup>1</sup> For more information see [http://www.nio.gov.uk/st\\_andrews\\_agreement-2.pdf](http://www.nio.gov.uk/st_andrews_agreement-2.pdf).

## The Request

---

3. The complainant requested the following information from the Northern Ireland Office (the NIO) on 21 September 2007:
  - "1. In connection with or arising from or at the St Andrews Conference in October 2006 did any letters, or other communication, issue from government, or any agency of government, to any of the participants? If so, please furnish copies.
  2. In connection with or arising from or at the St Andrews Conference in October 2006 did any letters, or other communication, issue from government, or any agency of government, to Rt Hon Ian Paisley MP? If so, please furnish copies.
  3. In connection with or arising from or at the St Andrews Conference in October 2006 did any letters, or other communication, issue from government, or any agency of government, to Mr Ian Paisley Junior MLA? If so, please furnish copies.
  4. In connection with or arising from or at the St Andrews Conference in October 2006 did any letters, or other communication, issue from government, or any agency of government, in connection with any planning matter? If so, please furnish copies."
4. The NIO responded to the complainant on 15 October 2007 to advise that the compliance with the first part of the request would exceed the cost limit of £600. The NIO indicated to the complainant that "identification, retrieval and review of files" would cost £900, as it would include "all of the logistical arrangements made prior to the St Andrews Conference". The NIO advised that the complainant had three options: firstly, to refine his request to bring it under the cost limit; secondly, to pay the full fee of £900; or finally, to withdraw the request. The NIO also advised that exemptions may apply to any information identified as relevant to the request.
5. The complainant wrote to the NIO on 23 October 2007 to refine his request. The complainant indicated that he was content to amend the first part of the request to read:
  - "1. In connection with or arising from or at the St Andrews Conference in October 2006 did any letters, or other

communication, issue from government, or any agency of government, to Sinn Féin and/or the DUP, or any representatives of the said parties? If so, please furnish copies.”.

The complainant indicated that he was interested only in “material issuing at or post St Andrews”.

6. The NIO responded to the complainant on 25 October 2007. The NIO advised that compliance with the first part of the request would still exceed the cost limit, and that it would still encompass “all of the logistical arrangements made prior to the St Andrews Conference”. The NIO also suggested that the complainant consider refining the second part of his request.
7. The complainant wrote to the NIO on 26 October 2007 to express his dissatisfaction at the NIO’s interpretation of his request. The complainant argued that he had already made it plain that he only wished to receive information issued at or after the St Andrews Conference, not logistical information. The complainant did however agree to refine the second part of his request to include only “correspondence in relation to planning matters between Government and the DUP”.
8. The NIO responded to the complainant’s refined request on 14 January 2008. The NIO provided some information to the complainant, but withheld other information relevant to the request. The NIO advised that this information was exempt under section 36(2)(a)(ii) and 36(2)(c) of the Act. Section 36(2)(a)(ii) provides an exemption if in the opinion of a qualified person disclosure would, or would be likely to, prejudice the work of the Executive Committee of the Northern Ireland Assembly. Section 36(2)(c) provides a more general exemption where disclosure would, or would be likely to, prejudice the effective conduct of public affairs. The NIO also advised that in the opinion of the qualified person the public interest in maintaining the exemptions outweighed the public interest in disclosure.
9. The complainant was not satisfied with the NIO’s response and requested an internal review on 22 January 2008. The complainant indicated that the NIO had failed to “identify the nature, subject matter or quantity of the withheld documents”. The complainant also expressed his view that the public interest strongly favoured disclosure, and suggested that the public interest had been “swamped by political considerations”.
10. The NIO wrote to the complainant on 5 March 2008 to advise that it had now completed the internal review as requested. The NIO

remained of the view that the withheld information was exempt under section 36(2)(a)(ii) and 36(2)(c) of the Act.

## **The Investigation**

---

### **Scope of the case**

11. On 7 March 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant alleged that the NIO had wrongly withheld the requested information, as it was his view that the public interest favoured disclosure.
12. Therefore the Commissioner's investigation in this case has focused on the information withheld under section 36(2)(a)(ii) and 36(2)(c) as set out in the NIO's refusal notice dated 14 January 2008.

### **Chronology**

13. On 23 December 2008 the Commissioner wrote to the NIO to request its submissions in relation to the complaint. The NIO responded to the Commissioner on 22 January 2009, advising that the information in question was particularly sensitive. The NIO therefore requested that a member of staff with appropriate security clearance meet with NIO officials to discuss its response to the request. The NIO also asked the Commissioner to clarify what information he required in relation to its application of the exemptions.
14. The Commissioner wrote to the NIO on 23 January 2009 to explain that he required evidence as to how the NIO reached the view that the information was exempt under section 36(2)(a)(ii) and 36(2)(c). The Commissioner also asked the NIO why it had not explained to the complainant what information it had withheld in relation to his request.
15. The NIO responded to the Commissioner on 30 January 2009. The NIO advised that information relating to its application of the exemption at sections 36(2)(a)(ii) and 36(2)(c) was highly sensitive and could only be shared with a member of the Commissioner's staff with the appropriate security clearance. The NIO indicated that it had been unable to confirm to the complainant the nature and extent of the withheld information, since to do so would risk disclosing exempt information.

16. Members of the Commissioner's staff met with the NIO on 24 April 2009 to inspect the withheld information and receive the NIO's submissions as to its application of the exemptions. Regrettably the investigation in this case was then substantially delayed following personnel changes at the Commissioner's office.
17. The Commissioner wrote to the NIO on 29 April 2010 to request further information on the NIO's application of the exemptions. The NIO responded to the Commissioner on 11 May 2010.

## **Findings of Fact**

---

18. The refusal notice of 14 January 2008 states that the withheld information includes information redacted from the documents provided to the complainant. According to the NIO's refusal notice the withheld information also includes "information contained in correspondence between Ministers and the leaders of the DUP and Sinn Féin which issued at or following the St Andrews summit".
19. However the Commissioner is mindful that the NIO is of the view that any further description of the withheld information in this case would risk disclosing information it considered to be exempt. Therefore the Commissioner is unable to refer to the withheld information in any detail when explaining his decision in this matter.

## **Analysis**

---

### **Exemptions claimed**

#### **Section 36(2)(a)(ii) and section 36(2)(c): prejudice to the effective conduct of public affairs**

20. Section 36(2)(a)(ii) and section 36(2)(c) provide that information is exempt if in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. Section 36(2)(a)(ii) provides an exemption if disclosure would, or would be likely to, prejudice the work of the Executive Committee of the Northern Ireland Assembly. Section 36(2)(c) provides a more general exemption where disclosure would, or would be likely to, otherwise prejudice the effective conduct of public affairs. The full text of the exemptions is set out at the legal annex at the end of this Notice.

21. In order to establish that the section 36 exemption has been applied correctly the Commissioner considers it necessary to:
  - Ascertain who was the relevant qualified person;
  - Establish that an opinion was given by that person;
  - Ascertain when the opinion was given;
  - Consider whether the opinion was objectively reasonable and reasonably arrived at;
22. The NIO advised the Commissioner that the request to consider the application of section 36(2)(a)(ii) and 36(2)(c) was submitted on 20 December 2007 to the then Secretary of State for Northern Ireland, the Rt Hon Shaun Woodward MP. Further information was provided to the Secretary of State on 8 January 2008. On 11 January 2008 the Secretary of State provided his opinion to the NIO.
23. Section 36(5) of the Act sets out who may act as the qualified person in relation to a public authority. In the case of government departments, any Minister of the Crown may act as qualified person. Therefore the Commissioner is satisfied that the Secretary of State was authorised to act as the qualified person in this case.
24. The Commissioner has also been guided by the Tribunal's indication that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur, rather than the severity, extent or frequency of such inhibition or prejudice (although it must not be trivial).
25. The Commissioner has inspected the submission and accompanying information provided to the qualified person. The Commissioner has also had detailed discussions with NIO officials in relation to the factors taken into account by the qualified person when he was considering his opinion.
26. In relation to the application of section 36(2)(a)(ii) and section 36(2)(c), the qualified person took into account the sensitive political nature of the negotiations at St Andrews, and the political context in Northern Ireland. The qualified person considered that releasing the withheld information could make individuals or political parties less likely to engage in oral or written discussion on issues at a time when continuing engagement with each other and with government was an essential element of the ongoing political process. The qualified person was mindful of the fact that Government was focused on developing necessary and effective working relationships between various interests. The qualified person was of the view that disclosure of information relating to particular discussions into the public domain would place these

relationships (and the political stability they encouraged) at risk. This would in turn prejudice the work of the Executive Committee of the Northern Ireland Assembly as well as the more general effective conduct of public affairs in relation to the governance of Northern Ireland.

27. Bearing in mind this information, and the nature of the submissions to the qualified person, the Commissioner is satisfied that the qualified person only took into account relevant factors when reaching his opinion. In view of all the above, the Commissioner is satisfied that the qualified person's opinion was reasonably arrived at. Furthermore he is satisfied that the substance of the requested information is such that the qualified person was able to reach a reasonable opinion that the exemption is engaged.

### **Public interest test**

28. Sections 36(2)(a)(ii) and 36(2)(c) are qualified exemptions and are therefore subject to the public interest test as set out in section 2(2) of the Act. The Commissioner must therefore decide if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest in disclosing the information**

29. The NIO identified a number of public interest arguments in favour of disclosing the withheld information. The NIO acknowledged the general public interest in being able to understand the way Government works, how decisions are made, and the extent to which various factors influence those decisions.
30. The NIO also accepted that disclosure of the withheld information would provide greater transparency and accountability and would increase trust in the conduct of public affairs.
31. The NIO noted that the issues surrounding the St Andrews Agreement were high profile and the subject of significant media interest and scrutiny. Therefore the NIO was of the view that disclosure would assist the public's understanding of the nature of the negotiations.
32. The complainant also provided arguments in favour of disclosure. The complainant was of the view that there was a strong public interest in finding out whether letters had been issued that were specific to the DUP and Sinn Féin respectively, and whether the contents of such letters were "*compatible or consistent*". The

complainant also questioned whether the withheld information had *"the capacity to threaten the effective conduct of the Executive as to overwhelm the public interest"*.

### **Public interest in maintaining the exemptions**

33. it is difficult to discuss in this decision notice the specific arguments in relation to the withheld information without disclosing the nature of that information. The NIO did not distinguish between section 36(2)(a)(ii) and section 36(2)(c), it provided public interest arguments "in favour of non-disclosure". However, given the subject matter of the withheld information, the Commissioner appreciates that in this case the public interest arguments in favour of maintaining the alternative limbs of the section 36 exemption are very closely related and there is some inevitable overlap. Therefore the Commissioner has considered the NIO's arguments in relation to both sections.
34. The Commissioner notes that, in accepting that the exemptions are engaged, he accepts the qualified person's opinion that disclosure of the withheld information would cause prejudice. However, this in itself is insufficient to tip the balance of the public interest in favour of maintaining the exemptions. The Commissioner must be satisfied that the public interest favours maintaining the exemption, and the NIO put forward a number of arguments in this regard.
35. The NIO argued to the Commissioner that disclosure of the withheld information would inhibit the parties' willingness to discuss difficult issues with government, for fear that details of those discussions would be disclosed. The NIO was of the view that such inhibition would not serve the public interest, as these discussions were vital in the context of the completion of devolution and the context of the power-sharing Northern Ireland Executive. The Commissioner recognises the importance the NIO placed on ensuring that discussions can take place in an atmosphere in which confidence and trust can be established and maintained. The Commissioner considers that mutual trust and confidence are fundamental requirements if such sensitive negotiations are to be successful. Therefore he is inclined to attach significant weight to this argument in this case.
36. The NIO also argued that disclosure of the withheld information would have an adverse impact on the quality of any dialogue that did take place between the parties and government. The NIO argued that this would ultimately result in undermined trust, which would in turn inhibit or affect further dialogue. Again, having inspected the withheld information, the Commissioner agrees that



this is a strong argument in favour of maintaining the exemptions on these grounds.

37. The NIO drew the Commissioner's attention to the timing of the request, which was submitted nearly a year after the St Andrews Conference. Although it is generally accepted that the sensitivity of information will diminish over time, the NIO pointed out that the withheld information dealt with issues that were still subject to discussion with the parties concerned. Therefore the issues were still "live" at the time of the complainant's request, and sensitivities had not at that time begun to decrease. The Commissioner considers that this is a strong argument in favour of maintaining the exemptions.

### **Balance of the public interest**

38. The Commissioner acknowledges that the St Andrews Agreement was crucial in that it enabled the Northern Ireland political parties to discuss with government such fundamental issues as power-sharing and the rule of law. However, although the St Andrews Conference took place in October 2006, the devolution of policing and justice did not take place until 12 April 2010. The Commissioner therefore appreciates that the political situation in Northern Ireland remained particularly sensitive at the time of the complainant's request. The Commissioner is of the view that there was a strong public interest in protecting the nature of the detailed discussions that took place, in order to enable parties to have trust in the process.
39. In light of the above, the Commissioner finds that the public interest in maintaining the exemptions is significantly stronger than the public interest in disclosing the withheld information. The Commissioner is therefore satisfied that the NIO acted correctly in withholding the information in response to the complainant's request.

### **Procedural Requirements**

#### **Section 10(1): duty to provide information within the statutory time limit.**

40. Section 10(1) of the Act states that a public authority must comply with section 1(1) promptly, and in any event not later than twenty working days after the request has been received.
41. The complainant submitted his first request on 21 September 2007, and submitted refined requests on 23 October 2007 and 26 October 2007. The NIO did not respond to the request of 26 October 2007

until 14 January 2008, at which point it provided some of the requested information to the complainant. The NIO failed to provide this information to the complainant within twenty working days from the date of the request. Therefore the Commissioner finds that the NIO breached of section 10(1) of the Act.

### **Section 17: refusal notice**

42. Where a public authority refuses a request for information it is required under section 17 of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon.
43. Section 17(1) states that the public authority must issue the refusal notice within the time for complying with section 1(1), which is twenty working days. The NIO's refusal notice of 14 January 2008 was issued well outside of the statutory time limit.
44. In accordance with section 17(1)(c), public authorities must state why the exemption they are seeking to rely upon applies. In this case, the NIO cited sections 36(2)(a)(ii) and 36(2)(c), but did not explain how either of these exemptions were engaged. Accordingly, the Commissioner finds that the NIO failed to comply with the requirements of section 17(1)(c) of the Act in relation to this matter.

### **The Decision**

---

45. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - The NIO correctly withheld information in reliance on the exemptions under section 36(2)(a)(ii) and section 36(2)(c) of the Act.
46. However, the Commissioner also finds that the public authority failed to comply with the following elements of the request in accordance with the requirements of the Act:
  - The NIO failed to provide the non-exempt information to the complainant within the statutory time limit, thus breaching section 10(1) of the Act;
  - The NIO's refusal notice was not issued within the timescale as set out at section 17(1) of the Act;
  - The NIO failed to explain in its refusal notice how the exemptions it sought to rely on applied to the withheld

information, thus breaching section 17(1)(c) of the Act.

## **Steps Required**

---

47. The Commissioner does not require the public authority to take any steps.

## Right of Appeal

---

48. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 23<sup>rd</sup> day of June 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex: Relevant statutory obligations

---

1. **Section 1(1)** provides 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.

2. **Section 10** provides that:

(1) ... a public authority must comply with section (1)(1) promptly and in any event not later than the twentieth working day following the date of receipt.

3. **Section 17(1)** provides that:

A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

4. **Section 36(1)** provides that:

This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

**Section 36(2)(c)** provides that –

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the

information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
  - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

**Section 36(5)** provides that –

In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown