

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 24 November 2011

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

#### Decision (including any steps ordered)

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1. The complainant made five requests to the Northern Ireland Office (the NIO). These requests related to the NIO Information Service (the NIOIS) and the transfer of staff from the NIO to the newly created Department of Justice. The complainant complained about the NIO's response to requests 1, 2, 4 and 5.
2. The Commissioner's decision is that the NIO correctly refused request 1 and 2 under section 12(1), as compliance would exceed the cost limit. Although request 5 was a revised version 2, the Commissioner finds that it could still be aggregated with request 1 and compliance would still exceed the cost limit. However the Commissioner has also decided that the NIO provided insufficient advice and assistance to the complainant in order for her to be able to submit a refined or revised request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide practical and meaningful advice to the complainant, so that she may actively use that information to submit a refined or revised request.
4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. The complainant requested information from the NIO on the following dates:
  - 28 March 2011 (request 1)
  - 28 March 2011 (request 2)
  - 20 April 2011 (request 3)
6. The requests are reproduced in full in Annex 1 at the end of this Notice.
7. The NIO responded to all three requests on 27 April 2011. The NIO estimated that compliance with request 1 alone would exceed the cost limit set out at section 12 of the Act. The NIO also argued that requests 2 and 3 could be aggregated with request 1, and these requests were also refused under section 12.
8. On 3 May 2011 the complainant challenged the NIO's decision to aggregate the three requests as she considered them to be separate. On the same day the complainant also submitted a further request (request 4) which was a revised version of request 1. Request 4 is reproduced in full at Annex 1.
9. The NIO conducted an internal review of its handling of requests 1, 2 and 3. On 2 June 2011 the NIO advised the complainant that it had decided to answer request 3, and that it did not in fact hold the requested information. The NIO asked the complainant for clarification with regard to request 4.
10. On 6 June 2011 the complainant submitted a further request (request 5), which was a revision of request 2. Request 5 is reproduced in full at Annex 1.
11. On 10 June 2011 the NIO advised the complainant that it had aggregated request 5 with requests 1 and 2, and refused it under section 12.

## **Scope of the case**

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12. The complainant contacted the Commissioner to complain about the way her requests for information had been handled. The complainant argued that her requests should not have been aggregated, but should have been considered separately. The complainant did not complain about the NIO's handling of request 3.

13. During the Commissioner's investigation it became apparent that the complainant had not responded to the NIO's request for clarification with regard to request 4. Therefore the NIO had not processed this request further. The Commissioner has written to the complainant and the NIO to explain how both parties could engage to resolve this issue.
14. In light of the above the scope of the Commissioner's investigation was limited to the following questions:
  - Would compliance with request 1 exceed the cost limit?
  - Can request 2 be aggregated with request 1?
  - Can request 5 be aggregated with requests 1 and 2?

## Reasons for decision

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15. Section 12(1) of the Act provides that an authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit, known as the cost limit (£600 for central government, £450 for all other authorities). Section 12 of the Act should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
16. Regulation 4(4) states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of the NIO, the £600 limit applies, which equates to 24 hours.
17. Section 12(4) of the Act and regulation 5 of the Fees Regulations provide that requests may be aggregated where two or more requests are made within sixty working days, and where they relate *to any extent*, to the same or similar information. This means that in certain circumstances an authority can legitimately refuse multiple requests

under the cost limit, even if compliance with one or more of these requests would not themselves exceed the cost limit.

### **Would compliance with request 1 exceed the cost limit?**

18. Technically, multiple requests within a single item of correspondence are separate requests for the purpose of section 12. If an authority has applied the exclusion under section 12 to multiple requests within a single item of correspondence, the Commissioner will need to consider whether each of these requests can be aggregated in accordance with the Fees Regulations. If it is found that one of the multiple requests is not sufficiently similar to the others, the authority will not be entitled to refuse that particular request under section 12 unless complying with the request by itself would exceed the cost limit.
19. In this case, request 1 comprised nine questions (set out in full in the legal annex at the end of this Notice). Having considered the wording of the nine questions, the Commissioner is satisfied that each question relates to the administration of overtime arrangements for various NIOIS staff grades. Two of these questions set a timeframe from 1970 to the date of the complainant's request, and the remaining seven set a timeframe from 2000 to the date of the request. The Commissioner is thus satisfied that the nine requests are for similar information and the NIO was entitled to aggregate them for the purposes of section 12.
20. The NIO provided the Commissioner with a detailed description of the steps it had undertaken to search for information relevant to request 1. First, the NIO explained that it did not hold any information dating from before 1972, as this was when the NIO itself was established. In addition, the NIO advised that it retains and destroys historical records in accordance with the Public Records Act 1958 as amended in 1967. This includes considering whether records should be transferred to The National Archives in accordance with the "thirty year rule". Therefore it was unlikely that the NIO would hold information dating from before 1981 which was relevant to request 1. The NIO also provided details of its searches for information held electronically, and information held in physical format.
21. The NIO advised that it uses an electronic system called TRIM to store details of information held in physical and electronic format. TRIM holds over 1.8 million NIO records, and can be searched most effectively by using keywords to identify information which might be relevant.
22. The NIO explained that it had conducted a number of searches of TRIM using a range of key words, including "overtime", "Information Service" and "Information Services Staffing".

*Information held in physical format*

23. The NIO advised the Commissioner that the TRIM search indicated 572 physical files which may contain relevant information. An NIO official then considered these search results to identify files most likely to contain relevant information. This exercise resulted in the identification of 42 files. The NIO estimated that it would take one hour to locate, extract and examine each file, i.e. 42 hours.

*Information held in electronic format*

24. The NIO advised the Commissioner that the TRIM search also identified 486 electronic files which might contain information relevant to the request. Two NIO officials then examined the search results to identify files most likely to contain relevant information. The NIO advised that this process took the officials a total of five hours, and resulted in 242 of the 486 files being identified as most likely to contain relevant information. However these files comprised more than 5000 documents in total which may or may not contain relevant information.
25. The NIO estimated that it would take on average one minute to review each file to assess whether it contained relevant information. As the NIO identified more than 5000 documents, this would exceed 83 hours. Added to the 42 hours estimated for examination of the physical files, the NIO concluded that compliance with request 1 would take at least 125 hours which significantly exceeds the cost limit of 24 hours.
26. The Commissioner has considered whether the NIO's estimate of 125 hours is reasonable. In doing so he notes that the nine questions which make up request 1 are extensive in terms of the information requested. Two of the nine requests cover more than 30 years of potentially relevant information, and include a range of formats such as emails and transcripts of telephone conversations. Some of the other questions within request 1 ask for breakdowns (by month and by year) in respect of arrangements for various NIOIS staff grades since 2000.
27. The NIO has also advised the Commissioner that relevant information relating to overtime may well be contained in individuals' personnel files. However the NIO did not produce an estimate of the time required to examine personnel files as it considered that it had already demonstrated that the cost limit would be exceeded.
28. Given the extent and detail of the information requested, the Commissioner accepts the NIO's explanation of its searches, and considers the NIO's overall estimate of the time required to be

reasonable. Therefore the Commissioner accepts the NIO's argument that compliance with request 1 would exceed the cost limit set out at section 12 of the Act.

### **Can request 2 be aggregated with request 1?**

29. As explained above, requests may be aggregated where they are made within sixty working days, and where they relate to any extent, to the same or similar information. The Commissioner has considered the wording of request 2, which comprises one question:

*"Please provide copies of all Agenda's and Minutes from general meetings which Dennis Godfrey, Director of Communications NIIS (Northern Ireland [Office] Information Service) held with all NIIS staff collectively in regard to the Devolution of Policing and Justice and how these changes would impact on NIIS staff between 01/01 2007 - 12/04/201"*

30. The Commissioner has considered whether this request meets the requirement as set out at regulation 5 in order to be aggregated with request 1.
31. The nine questions which comprise request 1 all relate to administration and NIOIS staff management. Request 2 also relates to NIOIS staff, and although it refers specifically to the devolution of policing and justice, the Commissioner considers that this can be reasonably interpreted as relating to administrative arrangements. For example, request 2 specifies information relating to meetings which discussed how the devolution of policing and justice would impact on NIOIS staff. The Commissioner considers that this request still falls under the general heading of staff management.
32. For the reasons set out above the Commissioner considers that, although requests 1 and 2 are not for the same information, they can collectively be classed as relating *"to any extent...similar information"* within the meaning of regulation 5. The Commissioner appreciates that *"administrative arrangements"* and *"staff management"* can be interpreted broadly, but in the circumstances of this case he does consider this sufficient for the purposes of regulation 5. Consequently, the Commissioner finds that the NIO was entitled to aggregate requests 1 and 2 and refuse them both under section 12 of the Act.

### **Can request 5 be aggregated with requests 1 and 2?**

33. Request 5 was submitted on 6 June 2011 for the following information:

*"Please provide copies of all Agenda's and Minutes from general meetings which Dennis Godfrey, Director of Communications NIIS (Northern Ireland Information Service) held with all NIIS staff collectively between 01/01 2007 - 12/04/2010".*

34. The NIO considered, and the Commissioner agrees, that request 5 was substantially similar to request 2, the only difference being that request 5 referred to "general meetings", rather than being limited to meetings about the impact of the devolution of policing and justice.

35. As indicated above the Commissioner has already found that request 2 could be aggregated with request 1. Given the Commissioner's view that request 5 is similar to request 2, it follows that request 5 can reasonably be aggregated with requests 1 and 2 for the purposes of the cost limit. Therefore the Commissioner finds that the NIO was entitled to refuse to comply with request 5.

### **Conclusion**

36. The Commissioner notes that the complainant expressed a strong view that each of her requests ought to be treated separately as she considered that they were unrelated. In particular the complainant suggested that the NIO could have chosen to respond to request 5 as it was straightforward and limited in scope.

37. However, the Fees Regulations clearly state that a public authority is entitled to aggregate requests that fulfil certain conditions. For the reasons set out above the Commissioner finds that requests 1, 2 and 5 collectively meet these conditions, and therefore the NIO was entitled to aggregate them.

### **Section 16 – advice and assistance**

38. Where section 12(1) is applied by a public authority, section 16 imposes a duty to provide advice and assistance to an applicant in order to help them access at least some of the information they seek. In these circumstances the Commissioner would expect a public authority to consider ways in which an applicant could refine their request to enable it to be brought under the costs threshold.

39. The NIO originally cited section 12 in its refusal notice dated 27 April 2011. In this letter the NIO suggested that the complainant consider refining her request:

*“For example, if the period for the information was considerably reduced and the requests focused on one specific aspect of the subject then the estimated cost may come within the appropriate limit”*

40. The Commissioner considers that the suggestions to reduce the time period, and focus on one specific aspect, are ambiguous and open to interpretation. The Commissioner is of the view that advice and assistance needs to be practical and meaningful to the complainant, so that they can actively use that information in order to submit a refined or revised request.
41. The Commissioner is of the view that, because of the range of information requested, the NIO should have provided more focused suggestions to the complainant, such as providing examples of time periods or aspects which could be dealt with under the cost limit, or details of which individual requests it would be prepared to consider separately from the remainder.
42. Consequently, the Commissioner has concluded that the NIO failed to provide appropriate advice and assistance; therefore he finds that the NIO did not comply with its duty under section 16 of the Act.



## Right of appeal

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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: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex 1

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### Request 1 (28 March 2011)

- Please provide any and all documentation including notes, minutes, correspondence, E mails, memoranda and transcripts of telephone conversations relating to the agreement that all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) were to be paid and using the exact wording "Overtime" from 1970 to the present.
- Please provide any and all written notification from NIO (Northern Ireland Office) to Pay Section authorising the payment of (using the exact wording) "Overtime" to all SIO's (Senior Information Officers) and IO's Information Officers in the NIO (Northern Ireland Office) from 1970 to the present.
- Please provide the total number of rest days in addition to annual leave and the normal number of Public and Privilege holidays awarded to all SIO's (Senior Information Officers) and IO's (Information Officers in the NIO (Northern Ireland Office) broken down by year who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of hours awarded as TOIL (Time Off In Lieu) awarded to all SIO's (Senior Information Officers) and IO's (Information Officers in the NIO (Northern Ireland Office) broken down by year who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of SIO (Senior Information Officers) and IO's (Information Officers) who agreed to Opt out and signed an Opt out agreements in regard to the European Working Time Directive in the NIO (Northern Ireland Office) from 2000 to present.
- Please provide the full range of percentage enhancements of annual salary paid to all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of hours worked by all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) broken down by month who were being paid a (using the exact wording) "Overtime" from 2000 to present.

- Please provide the total number of rest days awarded all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office broken down by month who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide any and all documentation including notes, minutes, correspondence, memoranda and transcripts of telephone conversations relating to any and all consultations with the Trade Union Side regarding the introduction, alteration and cessation of overtime working in regard to all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) who were being paid a (using the exact wording) "Overtime" from 2000 to present.

### **Request 2 (28 March 2011)**

Please provide copies of all Agenda's and Minutes from general meetings which Dennis Godfrey, Director of Communications NIIS (Northern Ireland Information Service) held with all NIIS staff collectively in regard to the Devolution of Policing and Justice and how these changes would impact on NIIS staff between 01/01 2007 - 12/04/2010.

### **Request 3 (20 April 2011)**

Please provide a copy the Agenda and Minutes from general meetings which Nick Perry held with all staff collectively in regard to the Devolution of Policing and Justice and how these changes would impact on staff on 10th February 2010.

### **Request 4 (3 May 2011)**

- Please provide any and all documentation including notes, minutes, correspondence, E mails, memoranda and transcripts of telephone conversations relating to the agreement that all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) were to be paid and using the exact wording "Overtime" from 2000 to the present.
- Please provide any and all written notification from NIO (Northern Ireland Office) to Pay Section authorising the payment of (using the exact wording) "Overtime" to all SIO's (Senior Information Officers) and IO's Information Officers in the NIO (Northern Ireland Office) from 2000 to the present.

- Please provide the total number of rest days in addition to annual leave and the normal number of Public and Privilege holidays awarded to all SIO's (Senior Information Officers) and IO's (Information Officers in the NIO (Northern Ireland Office) broken down by year who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of hours awarded as TOIL (Time Off In Lieu) awarded to all SIO's (Senior Information Officers) and IO's (Information Officers in the NIO (Northern Ireland Office) broken down by year who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of SIO (Senior Information Officers) and IO's (Information Officers) who agreed to Opt out and signed an Opt out agreements in regard to the European Working Time Directive in the NIO (Northern Ireland Office) from 2000 to present.
- Please provide the full range of percentage enhancements of annual salary paid to all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of hours worked by all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) broken down by month who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide the total number of rest days awarded all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) broken down by month who were being paid a (using the exact wording) "Overtime" from 2000 to present.
- Please provide any and all documentation including notes, minutes, correspondence, memoranda and transcripts of telephone conversations relating to any and all consultations with the Trade Union Side regarding the introduction, alteration and cessation of overtime working in regard to all SIO's (Senior Information Officers) and IO's (Information Officers) in the NIO (Northern Ireland Office) who were being paid a (using the exact wording) "Overtime" from 2000 to present.

**Request 5 (6 June 2011)**

Please provide copies of all Agenda's and Minutes from general meetings which Dennis Godfrey, Director of Communications NIIS (Northern Ireland Information Service) held with all NIIS staff collectively between 01/01 2007 - 12/04/2010.