

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 16 July 2012

Public Authority: Office of the First Minister and deputy First Minister

Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant has requested information held by the Office of the First Minister and deputy First Minister (OFMDFM) in relation to the appointment of the Head of the Northern Ireland Civil Service. Despite the Commissioner's intervention OFMDFM has failed to respond fully to the request. The Commissioner requires that OFMDFM respond to the complainant's request, either by disclosing the requested information or by issuing a refusal notice which includes the outcome of the public interest considerations.
2. 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 Act and may be dealt with as a contempt of court.

Request and response

3. On 24 January 2012 the complainant requested the following information from OFMDFM:

"Please send me all documentation (including letters, emails, briefing notes, advice for ministers and reports) held by OFMDFM relating to the recent recruitment to the post of Head of the Northern Ireland Civil Service. Please include documents relating to the decision to confine the arrangements to internal competition within the existing permanent secretary group and any concerns raised by anyone in relation to this.

I would also like to receive copies of any documents held relating to how the decision to appoint internally only compares with the process used in England and the Republic of Ireland. And also any documents relating to decisions made about the Candidate Information Booklet – including why it does not include a statement that the appointment will be made in accordance with the Office of Civil Service Commissioners' Code.

Please also send me all documents held relating to the appointment of Sir Bruce to the position of head of the Civil Service in 2008 relating to who was eligible to apply for this position."

4. On 21 February 2012 OFMDFM issued a refusal notice which advised that the requested information was held, but was exempt under sections 35 and 42 of the FOIA. OFMDFM advised that it required an additional 10 working days to consider the public interest.
5. The complainant requested an update on 9 and 21 March 2012. OFMDFM replied to this correspondence, but only to the extent of advising that it could not estimate when the outcome of the public interest test would be communicated.

Scope of the case

6. The complainant asked the Commissioner to investigate OFMDFM's continuing failure to respond to her request.
7. On 14 June 2012 the Commissioner wrote to OFMDFM to remind it of its obligations under the FOIA. The Commissioner stated that if OFMDFM did not respond to the complainant by 29 June 2012 he would issue a decision notice.
8. Regrettably the Commissioner did not receive any response from OFMDFM. Nor did the complainant receive any further correspondence from OFMDFM.

Reasons for decision

Section 1: General right of access

Section 10(1): Time for compliance

Section 17: Refusal notice

9. Section 1(1)(b) of the FOIA states 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.

10. Section 10(1) states that a public authority must comply with section 1(1) promptly and in any event no later than twenty working days after the date the request is received.
11. Section 17(1) states that where a public authority refuses a request for information it must provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. This notice must be provided within the timescale set out in section 10(1), ie twenty working days.
12. Section 17(3) states that if a public authority decides that the requested information is exempt by virtue of a qualified exemption, it may extend the time for compliance in order to consider the public interest. The authority may take such time as is "reasonable in the circumstances", and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
13. Although the FOIA does not define what is a "reasonable" time, it is the Commissioner's view that public authorities should aim to complete their consideration of the public interest within the normal 20 working days. In exceptional circumstances the Commissioner accepts that it may require up to 40 working days to complete this consideration, but in no case should it take longer than this.
14. In this case OFMDFM has issued a refusal notice stating that the requested information is exempt under sections 35 and 42 of the FOIA, both of which are qualified exemptions. OFMDFM originally advised the complainant that it would require an additional 10 working days, which would extend the time for compliance until 7 March 2012. However, OFMDFM has not met this deadline, nor has it provided the complainant with any estimate as to when it expects to have completed its consideration of the public interest.
15. The Commissioner is particularly disappointed that OFMDFM has failed to respond to his correspondence regarding this complaint. The Commissioner considers it important to give public authorities an opportunity to reconsider its handling of the case before issuing a decision notice. Many public authorities take this opportunity to rectify procedural failings, or provide additional explanatory information to the complainant. However that has not happened in this case, so the Commissioner has proceeded to issue a decision notice.
16. In the absence of any response from OFMDFM the Commissioner finds that OFMDFM has breached section 10(1) of the FOIA. Although OFMDFM has complied with section 17(1) in stating which exemptions are being relied upon, it has failed to comply with section 17(3) in failing

to communicate the outcome of the public interest consideration within a reasonable time.

17. The Commissioner requires OFMDFM to complete its consideration of the public interest and communicate the outcome to the complainant. Therefore OFMDFM must either disclose the requested information, or explain why the public interest in maintaining the exemptions claimed outweighs the public interest in disclosing the requested information.

Right of appeal

18. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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
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