

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 10 December 2012

Public Authority: Department of Finance and Personnel for Northern Ireland

Address: Rosepark House
Upper Newtownards Road
Belfast
BT4 3NR

Decision (including any steps ordered)

1. The complainant requested information held by the Department of Finance and Personnel for Northern Ireland (DFP). DFP has accepted that the information should be disclosed to the complainant but failed to do so until the Commissioner intervened. The Commissioner finds that DFP breached section 1(1)(b) and section 10(1) of the FOIA in failing to respond to the request within the statutory time for compliance.

Request and response

2. On 29 February 2012 the complainant requested the following information from DFP:

"In respect of a period commencing on 1 January 1995 and continuing up to the date of this request 29 February 2012, please confirm the following information under the Act:-

1. The number of individual claims from any claimant received by DFP at the suit of any claimant, broken down on a year by year basis with reference to date of receipt of claim by DFP from any claimant.

2. The number of individual claims received by DFP at the suit of any claimant that were subsequently withdrawn by any claimant, without compromise or settlement having been reached and at no cost to the public purse, broken down on a year by year basis with reference to date of withdrawal in any case.

3. *The number of individual claims as received by DFP at the suit of any claimant that were subject to a compromise agreement or settlement, at cost to the public purse, broken down on a year by year basis with reference to date of compromise or settlement.*
 4. *In regard to 3 above, the cost to the public purse, broken down on a year by year basis with reference to date of compromise agreement or settlement.*
 5. *The number of individual claims from any claimant received by DFP at the suit of any claimant that were not successfully defended on the merits and in respect of which, after conclusion of any hearing or other disposal, any claimant did receive or was awarded payment of damages, legal or other costs, or additional salary or remuneration arising from any change in employment status or grading as a direct or indirect result or outcome of any such claim.*
 6. *In regard to 5 above, the total cost to the public purse, broken down on a year by year basis with reference to date of conclusion of any hearing and award or other final outcome.*
 7. *The number of individual claims from any claimant received by DFP at the suit of any claimant that were successfully defended on the merits, so that any claimant did not receive payment of damages, legal or other costs, or additional salary or remuneration arising from any change in employment status or grading as a direct or indirect result of any such claim.*
 8. *The total cost to the public purse of professional fees and costs of the defence of the claim or claims of any such claimant or claimants, broken down on a year by year basis (1) with reference to the fees of Solicitors (whether "in house" or externally engaged) and (2) with reference to the fees of Counsel and (3) with reference to other professional advisors or consultants engaged."*
3. DFP responded on 16 April 2012, stating that it did not intend to answer the request as the complainant was involved in an Industrial Tribunal case. DFP advised that the complainant could:

"make a request for such information through the statutory questionnaire procedure, the Tribunal procedure for requesting information and discovery of documents - The Industrial Tribunals (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2005 as amended, refer."
 4. The complainant asked the Commissioner to intervene, and consequently DFP accepted that it was obliged to respond to the request under the provisions of the FOIA.

5. On 28 June 2012 DFP issued a refusal notice to the complainant. DFP stated that the requested information was exempt under section 21(1) of the FOIA because the complainant had another route of access as advised on 16 April 2012.
6. On 29 August 2012 DFP provided the complainant with the outcome of the internal review. DFP did not explicitly state that the information was not exempt, but it found that section 21(1) did not apply and that the information should be provided to the complainant.

Scope of the case

7. The Commissioner spoke to DFP on 2 November 2012 and 15 November 2012 and was told that the information was being prepared for disclosure to the complainant. However DFP was unable to confirm when the information would be disclosed.
8. On 3 December 2012 DFP advised the Commissioner that it had now responded to the request. DFP confirmed that it disclosed all of the requested information.

Reasons for decision

Substantive procedural matters

Section 1: General right of access

Section 10(1): Time for compliance

9. 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.
10. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than twenty working days after the date of receipt of the request.
11. In this case DFP confirmed that it held the requested information, and accepted that it should be provided to the complainant, however it failed to do so within twenty working days.
12. The Commissioner therefore finds DFP in breach of section 1(1)(b) for failing to provide the requested information by the time of the completion of the internal review. He also finds it in breach of section 10(1) of the FOIA in respect of the time taken to provide the requested information.

Right of appeal

13. 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

14. 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.
15. 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