

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 18 July 2013

Public Authority: Department of Culture, Arts and Leisure
Address: Causeway Exchange
1-7 Bedford St
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant requested information relating to media reporting of the collapse of the Northern Ireland Events Company. The Department of Culture, Arts and Leisure took nine months to respond to the request. The Commissioner's decision is that the Department failed to comply with sections 1, 10 and 17 of the FOIA. As the Department has now responded to the request the Commissioner requires no steps to be taken.

Request and response

2. On 24 July 2012 the complainant requested the following information from the Department:

"Reports on BBC Newsline and other BBC outlets on June 25th, 2008 referred to the details of a KPMG report into the collapse of the Northern Ireland Events Company.

Under your obligations under the Freedom of Information Act, I request that you release a copy of the following material;

- (1) *A schedule of any documentation referring to the BBC reporting of this matter.*
- (2) *Any communications between any Department official referring to the BBC report of this matter.*

(3) Any communications between any Department official and the Minister or any Special Advisor or political representative referring to the BBC reporting of this matter.

(4) Notes, minutes or communications referring to any action taken by Departmental or other officials with reference to the BBC's reporting of this matter".

3. On 15 August 2012 the Department advised the complainant that it required further time in order to consider the public interest. The Department advised that it hoped to be able to complete this consideration by 19 September 2012.
4. The complainant did not receive a substantive response to his request, and on 11 January 2013 he complained to the Commissioner.
5. The Commissioner wrote to the Department on 26 February 2013 to remind it of its obligations under the FOIA.
6. On 10 April 2013 the Department responded to the complainant's request. The Department provided some of the requested information and withheld the remainder in reliance on the exemptions at sections 31, 38, 40 and 42 of the FOIA.

Scope of the case

7. On 25 April 2013 the complainant advised the Commissioner that he had now received a response to his request. The complainant advised that his request had now been answered satisfactorily, but remained dissatisfied at the time taken to provide this response.
8. As the complainant has raised no issue with the substantive response to his request the Commissioner's investigation in this case was limited to the Department's handling of the request.

Reasons for decision

Section 1: general right of access

Section 10: time for compliance

Section 17: refusal notice

9. Section 1(1)(a) of the FOIA requires that a public authority confirm or deny to the complainant that the requested information is held. 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. 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.
10. The Department provided the Commissioner with a chronology detailing the steps taken in handling the complainant's request. This indicated that the Department completed its consultation with internal and external parties by the middle of August 2012. Following further deliberations a submission was provided to the Minister on 13 November 2012. This submission considered the application of the exemptions at sections 21, 31, 35, 38, 40 and 42 of the FOIA, and provided a draft response to the complainant.
11. The Minister's office responded to the submission on 14 March 2013, some four months after it was provided. At this stage the Minister queried the appropriateness of the exemptions at sections 21 and 35 of the FOIA, and suggested that some information could be disclosed to the complainant. On 8 April 2012 a further submission was provided to the Minister. This submission took account of the Minister's comments and considered the application of the exemptions at sections 31, 36, 38, 40 and 42 of the FOIA. A further draft response to the complainant was also provided.
12. On 9 April 2013 the Minister's office advised that the Minister did not accept that the exemption at section 36 should be applied. At this stage the Minister asked that any information which was not exempt should be disclosed to the complainant. The Department issued its response to the complainant on 10 April 2013 as set out at paragraph 6 above.
13. The Commissioner accepts that it was reasonable and appropriate for the Department to consult with relevant parties before making a decision as to how to respond to the request. However the

Commissioner has seen no explanation for the time taken by the Minister's office to consider the submission of 13 November 2012.

14. The Commissioner is concerned that, had he not intervened on 26 February, there is no indication that the complainant's request would have been progressed. The Minister's office took four months to respond to the submission, although the Commissioner recognises that once a response was made the request was progressed and ultimately answered.
15. The Department failed to comply with section 1(1)(b) and section 10(1), given that it exceeded the time for compliance set out in the FOIA. The Commissioner is of the view that the information which was clearly not exempt should have been disclosed to the complainant promptly. As the Department did not confirm or deny that it held the requested information to the complainant within the time for compliance, the Commissioner also finds that the Department failed to comply with section 1(1)(a) and section 10(1) of the FOIA.
16. Section 17(1) of the FOIA states that if the authority wishes to rely on any exemption it must issue a refusal notice promptly, and in any event no later than twenty working days after the date of receipt of the request. Section 17(2) of the FOIA allows a public authority to extend the time limit where it is still considering the public interest as long as certain measures are taken. Section 17(2) states that the refusal notice:

"must indicate that no decision ... has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached".
17. The effect of this is that a public authority must reach a decision about whether or not a qualified exemption is engaged within twenty working days. If it determines that the exemption is engaged, then a refusal notice that complies with section 17(1) must be issued within twenty working days. The public authority therefore is only permitted to extend the time for compliance in order to consider the public interest test under an exemption which has been applied – and communicated to the applicant – within 20 working days of the request.
18. In this case the Department wrote to the complainant on 15 August 2012 to advise that it required further time to consult with other parties to consider the public interest. This was nearly a month after the request was received. However at this stage the Department did

not specify which exemptions were engaged and why this was the case. The chronology provided to the Commissioner by the Department suggests that the Department was in fact considering the engagement of exemptions as well as the public interest. The Commissioner also notes that the main delay in this case was consultation with the Minister, rather than consultation with any other parties.

19. The Commissioner wishes to stress that public authorities must not cite section 17(3) in order to gain time to consider the engagement of exemptions. This extension of the time limit is available only for the purpose of deciding whether the public interest means that an exemption should be maintained or exempt information disclosed.
20. In this case the Commissioner finds that the Department failed to comply with section 17 as it failed to issue a valid refusal notice within the time for compliance.

Other matters

21. Although it does not form part of this decision notice the Commissioner wishes to comment on the Department's consideration of the public interest test in this case. The Commissioner considers that public authorities should aim to conduct the public interest test within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken should in no case exceed 40 working days from the date of the request.
22. In this case the Department took nearly eight months to make a decision in relation to the public interest. The Commissioner considers this excessive, and expects the Department to take steps to ensure that future requests are considered more promptly.

Right of appeal

23. 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

24. 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.
25. 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