

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 28 February 2017

Public Authority: Department for Communities
Address: Lighthouse Building
1 Cromac Place
Belfast
BT7 2JB

Decision (including any steps ordered)

1. The complainant has requested information transferred to the Public Records Office of Northern Ireland (PRONI), part of the Department for Communities. At the time of issuing this decision notice PRONI had not provided the complainant with a substantive response to the request. The Commissioner's decision is that the public authority has failed to respond to the complainant's request within the statutory time for compliance. Therefore the public authority has failed to comply with section 10 of the FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request: Firstly, confirm or deny that the requested information is held (or, if the public authority decides to refuse to confirm or deny that any of the requested information is held, then a refusal notice should be issued that complies with the requirements of section 17 of the FOIA).
 - Secondly, and subject to the above: to the extent that the requested information is held the public authority must either disclose it or, if it wishes to withhold any information, issue a refusal notice in relation to the information it wishes to withhold and disclose the remainder.
3. 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 pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

4. The request in this case was made to PRONI. At the time of the request PRONI was part of the Department for Culture, Arts and Leisure (DCAL), but DCAL has itself since become part of the new Department for Communities. The Department, rather than PRONI, is the public authority under schedule 1 to the FOIA and on whom this decision notice is served. However, the Commissioner has referred to PRONI throughout this decision notice for ease of reference.
5. On 27 March 2013 the complainant requested information relating to the death of Mr Francis McColgan, who died in 1983. PRONI acknowledged receipt of the request on 8 May 2013.
6. On 26 June 2013 PRONI advised the complainant that the requested information was at that time a court record, and thus exempt from disclosure under the FOIA by virtue of section 32 of the FOIA. PRONI advised that the exemption at section 32 would fall away when the requested information became 30 years old, since it would then become a historical record. In this case the section 32 exemption fell away on 31 December 2013.
7. The Commissioner understands that PRONI treated the request as having been resubmitted or renewed after 31 December 2013. On 7 July 2014 PRONI issued letters of consultation to the "responsible authorities" as set out under section 15 of the FOIA. The responsible authorities in this case were the Department of Justice (DOJ) and the Northern Ireland Office (NIO).
8. At the date of issuing this decision notice PRONI had not received a response from the responsible authorities. Therefore no information had been disclosed to the complainant. Nor had a fresh refusal notice been issued.
9. For the purposes of her investigation the Commissioner asked PRONI to provide a chronology of its handling of the request. This is set out in annex 1 at the end of this decision notice.

Scope of the case

10. On 14 December 2016 the complainant contacted the Commissioner to complain that PRONI had not issued a substantive response to their request.

11. Under section 50(2)(a) of the FOIA the Commissioner is not required to make a decision if the complainant has not exhausted the public authority's internal review process. However, since PRONI has not responded to the request there is no decision to review. Therefore the Commissioner considered it appropriate to accept the case as valid without an internal review.
12. The Commissioner must stress that she cannot make any decision as to whether or not the requested information ought to be disclosed to the complainant. This is because the public authority has not made any decision to refuse the request to any extent. The Commissioner's decision in this case is accordingly limited to PRONI's failure to issue a substantive response within the statutory time for compliance.
13. The Commissioner prefers to resolve complaints informally where possible. However a decision notice is required in this case because PRONI is unable to provide even an estimated date for compliance with the request.

Reasons for decision

Section 1: general duty to comply with a request

Section 10: time for compliance

14. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not it holds the requested information. This is known as the "duty to confirm or deny". 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 refusal notice has been issued to explain any exemptions relied on. This is known as the "duty to disclose".
15. Section 10(1) states that the public authority must comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request. The Freedom of Information (Time for Compliance with Request) Regulations 2004 extend the time for compliance, in relation to requests received by PRONI, from 20 working days to 30 working days.

Duty to consult the responsible authority

16. Section 66(2) of the FOIA states that, before deciding whether any exemption applies either in respect of the duty to confirm or deny or the duty to disclose, PRONI must consult the "responsible authority".

17. Section 15(5) sets out how the responsible authority is determined in various scenarios:

“(d) in the case of a record transferred to the Public Record Office of Northern Ireland from a Northern Ireland department, the Northern Ireland Minister who appears to the appropriate Northern Ireland Minister to be primarily concerned”.

“(e) in the case of a record transferred to the Public Record Office of Northern Ireland from any other person, the person who appears to the appropriate Northern Ireland Minister to be primarily concerned”.

18. The “appropriate Northern Ireland Minister” is defined at section 84 of the FOIA as the Northern Ireland Minister in charge of the Department for Culture, Arts and Leisure for Northern Ireland (now the Department for Communities).
19. The FOIA does not prescribe any form and extent of consultation with the responsible authority. However PRONI is required to consult with the responsible authority, and reach a decision about whether or not an exemption or exclusion from the duty to confirm or deny applies to the requested information, within the time for compliance (30 working days).

Section 17: refusal notice

20. Section 17(1) of the FOIA states that if a public authority wishes to refuse a request it must provide the complainant with a refusal notice within the statutory time for compliance. This decision notice must state what exemption is being relied upon and explain why this is the case. In the case of PRONI the Commissioner acknowledges that the Regulations extend the “normal” time for compliance to 30 working days. The time for compliance runs from the day after the date of receipt.
21. At the date of issuing this decision notice PRONI had not issued a substantive response to the complainant, nearly four years after the request was originally submitted, and three years after the requested information ceased to fall under the exemption at section 32.
22. The Commissioner recognises that PRONI has sought to fulfil its obligations under the FOIA. Nevertheless, since it has failed to issue a response within the statutory time for compliance the Commissioner must find that PRONI has failed to comply with section 10(1) of the FOIA.

Other matters

23. The Commissioner has recorded in several previous decision notices that PRONI has a large number of information requests awaiting a response. The Commissioner has also acknowledged the unique difficulties presented by the requirement for PRONI to consult with "responsible authorities" before issuing a response.
24. That said, it remains the case that the FOIA sets out a clear, statutory time for compliance that all public authorities are expected to meet. The FOIA does not explicitly set a timescale for the responsible authorities to respond to PRONI's consultation. It follows however that they are required to respond in a manner that allows PRONI to meet the statutory time for compliance.

Right of appeal

25. 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 123 4504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1: chronology of the request

1. On 27 March 2013 the complainant requested a copy of the inquest file of Mr Francis McColgan, deceased in 1983. PRONI acknowledged receipt of the request on 8 May 2013.
2. In line with section 15 of the FOIA, PRONI sent the requested information to the NI Courts and Tribunals Service (NICTS, part of DOJ, the Department of Justice) on 8 May 2013.
3. On 26 June 2013 NICTS advised PRONI that the requested information was at that time a court record, and thus exempt from disclosure under the FOIA by virtue of section 32 of the FOIA. NICTS advised that the exemption at section 32 would fall away when the requested information became 30 years old, since it would then become a historical record. In this case the requested information would become a historical record on 31 December 2013. However NICTS offered to consider what information it might be able to disclose on a discretionary basis, ie outside the provisions of the FOIA. NICTS requested evidence of the applicant's (ie the client the complainant represented) relationship to the deceased.
4. PRONI obtained the required evidence from the complainant, but the Commissioner understands that no information was disclosed to the complainant, either under the FOIA or outside its provisions.
5. On 7 July 2014 PRONI re-issued the requested information for consultation to the DOJ and the Northern Ireland Office (the NIO), as the responsible authorities under section 15 of the FOIA. PRONI received a response from both authorities on 24 July 2015, almost exactly a year later. Both authorities considered that the requested information should be entirely withheld, citing various exemptions under the FOIA.
6. Having considered the representations provided by the DOJ and the NIO. PRONI issued further letters to both authorities on 25 April 2016. These letters set out what information PRONI was minded to release, and offered the DOJ and the NIO a further opportunity to comment.
7. At the date of issuing this decision notice PRONI had not received a response from the DOJ or the NIO.