

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 13 October 2022

Public Authority: Department for Communities
Address: Causeway Exchange
1-7 Bedford St
Belfast
BY1 7FB

Decision (including any steps ordered)

1. The complainant requested information transferred to the Public Records Office of Northern Ireland (PRONI), part of the Department for Communities for Northern Ireland. 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 timescale.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a substantive response to the information request. If the public authority decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.
3. 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 29 July 2020 the complainant submitted a request to PRONI for court documentation relating to a deceased family member.
5. PRONI contacted the complainant on 3 August 2020 to clarify whether they wanted their request handled under FOIA or the Court Files Privileged Access Rules (Northern Ireland) 2016.¹ The complainant confirmed on 23 September 2020 that they were content for the request to be handled under FOIA.
6. Despite further exchanges of correspondence the complainant did not receive a substantive response to their request.

Scope of the case

7. On 10 August 2022 the complainant contacted the Commissioner to complain that PRONI had not yet provided a substantive response to their request.
8. Under section 50(2)(a) of FOIA the Commissioner is not required to make a decision if the complainant has not exhausted the public authority's internal review process. However, as 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 and proceed to an investigation.
9. The request in this case was made to PRONI, part of the Department for Communities for Northern Ireland. The Department, rather than PRONI, is the public authority under Schedule 1 to FOIA and on whom this decision notice is served.

Reasons for decision

Section 1: general duty to comply with a request **Section 10: time for compliance**

10. Section 1(1)(a) of FOIA generally 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 valid

¹ <https://www.legislation.gov.uk/nisr/2016/123/made>

refusal notice has been issued. This is known as the "duty to disclose".

11. 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 2004² 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

12. Section 66(2) of 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".
13. Section 15(5) sets out how the responsible authority is determined in various scenarios:

"(c) in the case of a record transferred to the Public Record Office of Northern Ireland from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the appropriate Northern Ireland Minister to be primarily concerned".

"(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".

14. The "appropriate Northern Ireland Minister" is defined at section 84 of FOIA as the Northern Ireland Minister in charge of the Department for Communities for Northern Ireland (the Minister for Communities).
15. 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).

² <https://www.legislation.gov.uk/ukxi/2004/3364/contents/made>

Section 17: refusal notice

16. Section 17(1) of FOIA states that if a public authority wishes to refuse a request it must provide the complainant with a refusal notice within the time for compliance. This decision notice must state what exemption is being relied upon and explain why this is the case.
17. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is "reasonable in the circumstances", and must then either disclose the requested information or explain to the requester why the public interest in maintaining the exemption outweighs the public interest in disclosure.
18. If the public authority wishes to take additional time to consider the public interest, it is still required to issue a refusal notice that complies with the requirements of section 17(1) within 20 working days. This 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".
19. Although FOIA does not define what a reasonable time is, it is the Commissioner's position 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 up to 40 working days may be required to complete this consideration.³
20. However, in the case of PRONI the Commissioner acknowledges that the Regulations referred to at paragraph 11 above extend the "normal" time for compliance to 30 working days. PRONI 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 requester – within 30 working days of the request.
21. Therefore the total time that the Commissioner would consider reasonable for PRONI in such circumstances would be 50 working days after the request has been received.

³ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

Application of qualified exemptions and the public interest test

22. Sections 66(3) and 66(4) of FOIA state that if a qualified exemption is engaged then it will be for the responsible authority, rather than PRONI, to make the public interest decision regarding the duty to confirm or deny and the duty to disclose. Section 15 of FOIA provides that in such cases PRONI must send a copy of the request to the responsible authority within the time for compliance (ie 30 working days).
23. The responsible authority is required to inform PRONI of the determination required, including public interest considerations in relation to a qualified exemption, or exclusion from the duty to confirm or deny. There is no statutory time limit but section 15(3) of FOIA requires that the responsible authority respond to PRONI "within such time as is reasonable in all the circumstances", giving its decision as to the balance of the public interest, in respect of either the duty to confirm or deny or to disclose the information (as relevant), as required by section 66(3) or 66(4).
24. As indicated above the Commissioner's view is that the requester should be advised of the outcome of the public interest consideration no later than 50 working days after the request has been received by the public authority.

PRONI's handling of the request

25. The Commissioner contacted PRONI on 19 August 2022 to obtain further information about the handling of the request.
26. On 31 August 2022 PRONI advised the Commissioner that it was working through a backlog of outstanding requests in order of receipt. The backlog had come about as a result of the period between 2018 and 2020 when no Northern Ireland Ministers were in place.
27. In this case PRONI confirmed that it had not yet completed the final stage of the consultation and authorisation process. However it had provided the complainant with updates explaining the situation and apologising for the delay.

Conclusion

28. At the time of issuing this decision notice PRONI had not issued a substantive response to the complainant, more than two years after receipt of the request. This clearly exceeds time allowed for compliance; therefore the Commissioner must find that PRONI has failed to comply with section 10(1) of FOIA.

Other matters

29. The Commissioner is aware that PRONI currently has a large number of information requests awaiting a response. The Commissioner understands that PRONI is required to consult with third parties before issuing a response, and in Northern Ireland the process of consultation has proven to be complex and time-consuming.
30. The Commissioner appreciates the unique difficulties faced by PRONI in completing the consultation process within the time for compliance. However he is mindful that FOIA aims to address this by providing an extended time for compliance.
31. In any event the Commissioner expects PRONI – and those third parties designated as “responsible authorities” – to take the necessary steps to ensure that requests are responded to within the statutory time for compliance.

Right of appeal

32. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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