

## Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

### Decision Notice

**Date: 28 September 2009**

**Public Authority:** National Offender Management Service [an executive agency of the Ministry of Justice]  
**Address:** Data Access & Compliance Unit  
Information Directorate  
Ministry of Justice  
Sixth Floor  
Postal Point 6.23  
102 Petty France  
London SW1H 9AJ

### Summary

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On 7 October 2008 and 3 November 2008 the complainant contacted the Commissioner to complain about the way his request of 6 February 2008 had been handled by the National Offender Management Service (NOMS). The Commissioner has decided that some of the requested information should have been considered under the Environmental Information Regulations 2004 ("the EIR"). To the extent that the EIR applied NOMS breached Regulation 5(1) and (2) in failing to provide the requested information that it eventually released within twenty working days. To the extent that the Freedom of Information Act applied to the requested information, NOMS breached sections 1(1)(a) and (b) and 10(1) by not confirming the existence of information and providing it within the statutory timescales. In relation to the information that the public authority withheld on the basis of section 40(2), the public authority breached section 17(1)(a), (b) and (c) in failing to provide a refusal notice compliant with that section within twenty working days of the request. The Commissioner has not ordered any steps.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act") or with the requirements of Part 2 of the Environmental Information Regulations 2005. This Notice sets out his investigation and decision in this case.
2. The Commissioner notes that the National Offender Management Service (NOMS) is not a public authority itself, but is part of the Ministry of Justice. He also understands that Her Majesty's Prison Service is part of NOMS. In view of

this the public authority in this case is actually the Ministry of Justice not NOMS or the Her Majesty's Prison Service. However, for the sake of clarity, this Decision Notice refers to NOMS as if it was the public authority and does not separately reference Her Majesty's Prison Service.

## Request

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3. On 6 February 2008 the complainant made a request to the public authority for the following,

“Recorded information held by HM Prison Service/NOMS in HM Prison Liverpool and at the North West area office (responsible for HM Prison Liverpool) which was produced by or provided to HM Prison Service/NOMS personnel from September 2005 to April 2006 (inclusive) relating to the exhumation of the remains of George Kelly from Walton Prison which took place in March 2006. This information was to include communications such as emails held, generated by or being provided to a series of individuals as well as Liverpool City Council and contractors and consultants undertaking work and providing advice and assistance in connection with matters connected to and arising from the exhumation”.

4. On the basis of the information available, the Commissioner's understanding is that no response to the request was provided to the complainant by the time he made his complaints dated 7 October and 3 November 2008.

## The Investigation

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### Scope of the case

5. The Commissioner understands that, following his intervention, the complainant received the requested information with some redactions on 4 June 2009. The Commissioner understands that some of the material released was the complainant's own personal data and that it was released on a discretionary basis. The complainant has confirmed that he is content with the information that has been released to him but that he requires a decision notice regarding the handling of the request and in particular the delays on the part of the public authority. In the circumstances the Commissioner has limited his investigation and decision to the procedural issues related to the information released under the Act. He has not made a decision about the material released to the complainant on a discretionary basis because this is outside the requirements of the Act, nor has he reached a decision about whether or not the public authority appropriately applied exemptions to the redacted material because the complainant is content with that information being withheld.

## Chronology

6. There has been extensive correspondence between the public authority and the Commissioner dating from October 2008 regarding this case. The key correspondence is detailed below. On 9 October 2008 the Commissioner emailed the public authority about the request dated 6 February 2008 and the lack of a substantive response to the complainant. He asked the public authority to provide a response to the complainant in accordance with the requirements of the Act within ten working days.
7. On 22 October 2008 the public authority informed the Commissioner that it required an extension of this deadline due to relocation of premises. However by early November it still had not responded to the complainant nor provided any of the information requested to him.
8. On 3 March 2009 the Commissioner again wrote to the public authority stating that it was required to provide the complainant with a copy of the information he requested or issue a refusal notice that complied with section 17 of the Act within 20 working days. On 24 March 2009 the public authority informed the Commissioner that whilst some progress had been made in collating information pertinent to the request, it had not yet applied any exemptions and or redacted and released information.
9. On 4 June 2009 the public authority disclosed the requested information to the complainant with some material redacted. It explained that the information that had been removed was exempt under section 40(2) of the Act on the basis that it constituted personal data of third parties and to disclose it would breach the data protection principles. It also indicated that some information that was being released was the complainant's own personal data. As such it was exempt under section 40(1) of the Act. However it was disclosed to him on a discretionary basis.

## Analysis

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### Environmental Information Regulations

10. The Commissioner has reviewed the information that was disclosed to the complainant and in his view some of it constitutes environmental information. It contains details about the exhumation process and the impact on the land and landscape, including the amount of soil that needed to be removed, what supporting structures needed to be put in place and technical information about how to reconstruct the area once the remains had been removed. In the Commissioner's view this constitutes environmental information under regulation 2(1)(c) as it is on an activity affecting or likely to affect the elements of the environment in 2(1)(a), in particularly the land and landscape. To the extent that the information is environmental it should have been considered under the EIR. There was also non-environmental information that was released to the complainant which was appropriately considered under the Act and which is dealt with further below.

## **Regulation 5(1)**

11. In failing to supply the environmental information that was eventually released in June 2009, within twenty working days the public authority breached regulations 5(1) and (2).

## **Sections 1 and 10**

12. In failing to confirm that the non-environmental information within the scope of the request and eventually released was held and to supply it to the complainant within twenty working days the public authority breached sections 1(1)(a) and (b) and 10(1) of the Act

## **Section 17(1)**

13. In relation to the information that was withheld from the complainant under section 40(2) of the Act the Commissioner finds that in failing to provide a refusal notice compliant with section 17(1) within twenty working days the public authority breached section 17(1)(a), (b) and (c) of the Act.

## **Steps Required**

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14. The Commissioner does not require the public authority to take any steps in this case.

## Right of Appeal

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15. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 28th day of September 2009**

**Signed .....**

**Jo Pedder  
Senior FOI Policy Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### General Right to Access

Section 1(1) provides that:

“(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

#### Time for compliance with request

Section 10 provides that:

“(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given”.

#### Refusal notices

Section 17(1) provides that:

“(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies”

## **Environmental Information Regulations 2004**

### General Right to Access

Regulation 5(1) states:

“...a public authority that holds environmental information shall make it available on request.”

### Time for compliance with request

Regulation 5(2) states:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”