

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 30 March 2010**

**Public Authority:** Northern Ireland Office  
**Address:** 11 Millbank  
London  
SW1P 4PN

### Summary

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The complainant requested information relating to communications between the UK Government and the Provisional IRA during the 1981 hunger strike. The NIO withheld some information under section 27 of the Act. The NIO refused to confirm or deny whether it held further information, citing the exemptions at sections 23 and 24. The Commissioner finds that the section 27 exemption has been correctly applied, and the information should not be disclosed. Further, the Commissioner finds that the NIO acted correctly in refusing to confirm or deny whether it held further information in reliance on sections 23 and 24. Therefore the Commissioner requires no further steps to be taken.

### 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). This Notice sets out his decision.

### Background

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2. This complaint relates to the hunger strikes which took place in Northern Ireland in 1981. In 1980 the British Government announced that it was ending "special category" status for prisoners who were members of paramilitary organisations. From October to December 1980 a group of republican prisoners undertook a hunger strike in

protest at this decision. These prisoners mainly belonged to the Provisional IRA (PIRA).

3. Another hunger strike began in March 1981, as the prisoners demanded the reinstatement of "special category" status. The prisoners made five specific demands, including the right to wear their own clothing, and the right not to undertake prison work. Ten prisoners died between May and August 1981.
4. The British Government claimed at the time of the hunger strikes that it did not and would not talk to PIRA. Subsequently it has been stated by various individuals that such contacts did take place.

## The request

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5. The complainant made the following request to the NIO on 26 May 2006:

"This is a request for information under the Freedom of Information Act. In the event that the information is held by another department I am asking you to help me obtain it.

My request is for details of communications between the British Government and Sinn Féin and/or the IRA during the years 1980 and 1981."

6. The NIO wrote to the complainant on 27 June 2006 advising that his request was too broad and that compliance would exceed the cost limit under the Act. The complainant wrote to the NIO on 29 June 2006 to advise that he was willing to refine his request to:

"...communications between the British Government and Sinn Féin / IRA from 10 August 1980 to 10 August 1981, regarding the hunger strikers."

7. On 12 July 2006 the NIO responded to the request. The NIO advised the complainant that it had "established that we do not hold any record of direct communications". However the NIO did provide the complainant with two documents which did not fall within the scope of his request, but which it considered may be of interest to him.
8. The complainant was dissatisfied with this response, and wrote to the NIO to request an internal review. This letter was not dated, but the NIO received it on 7 August 2006. In this letter the complainant

challenged the NIO's claim that it did not hold any record of direct communication.

9. The NIO acknowledged receipt of this letter on 29 August 2006. The NIO confirmed that it would conduct an internal review as requested, and additionally informed the complainant that it had now identified information relevant to the request. However the NIO did not provide any of this information to the complainant, nor did it advise that this information was exempt.
10. The NIO wrote to the complainant again on 9 November 2006 to advise that it had now completed its internal review. The outcome of the internal review was as follows:
  - 11 documents were provided to the complainant
  - Some information was withheld in reliance on the exemption under section 27 of the Act (prejudice to international relations)
  - The NIO refused to confirm or deny whether it held any further information citing the exemptions under section 23 (information supplied by or relating to bodies dealing with security matters) and section 24 (national security).

## The Investigation

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### Scope of the case

11. On 14 November 2006 the complainant contacted the Commissioner to complain about the way his request of 26 May 2006 had been handled. The complainant did not consider that the information provided by the NIO answered his request, and raised the following issues:
  - The NIO had failed to provide the requested information
  - The NIO had failed to respond to the request within 20 working days
  - The NIO had failed to provide "proper advice and help"
  - The NIO had failed to properly explain why it was refusing the request
  - The NIO wrongly applied exemptions to the requested information.
12. During the course of the investigation the complainant also reminded the Commissioner that he had asked for assistance from the NIO if the information he requested was held by another department. This does

not fall under the requirements of Part I of the Act, so is addressed in Other Matters below.

## **Chronology**

13. Unfortunately, due to a backlog of complaints made under section 50 of the Act, there was a delay of more than a year before the Commissioner's investigation got underway. The Commissioner contacted the NIO on 7 January 2008 to advise that the case had been allocated. The NIO wrote to the Commissioner on 16 January 2008 to confirm that it would be content for the Commissioner's staff to inspect the information withheld under section 27 of the Act. However, in relation to the NIO's reliance on sections 23 and 24 of the Act, the NIO declined to confirm to the Commissioner whether or not it held relevant information. The NIO advised the Commissioner of its concern over the sensitivity of the issues involved.
14. A member of the Commissioner's staff inspected the information withheld under section 27 on 14 February 2008. However the NIO advised that it required a member of staff with higher security clearance to discuss its reliance on sections 23 and 24.
15. Regrettably the Commissioner's investigation was further delayed following staff changes at his office. A senior member of the Commissioner's staff with the appropriate security clearance met with the NIO on 12 January 2009. At this meeting the NIO presented information which it had not originally considered to fall within the scope of the request. The Commissioner's senior member of staff advised the NIO of his view that this information ought to be provided to the complainant. The Commissioner's senior member of staff also discussed issues relating to sections 23 and 24 of the Act.
16. The NIO advised the Commissioner that it had previously sought to rely on section 17(4) of the Act in not advising the complainant why the exemptions applied, or why it could not confirm or deny whether it held relevant information. The NIO advised that it was no longer seeking to rely on section 17(4), and had now provided explanatory information to the complainant in this respect.
17. On 27 February 2009 the NIO provided the complainant with the information it had provided to the Commissioner at the meeting on 12 January 2009. This comprised five documents. The NIO also provided a brief explanation as to its reasons for relying on sections 23(5) and 24(2) of the Act.

18. On 4 March the NIO provided the Commissioner with further arguments relating to its application of the exemption at section 27 of the Act.
19. As the NIO had released further information, the Commissioner contacted the complainant to ascertain whether he was now satisfied that his request had been answered. The complainant remained of the view that he had not received all the information which ought to have been disclosed.
20. On 25 March 2009 the Commissioner wrote to the NIO with further enquiries in relation to its handling of the request. The NIO responded on 8 April 2009.

## Findings of fact

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21. The NIO has confirmed that it is withholding one piece of information in reliance on the exemption under section 27 of the Act.
22. However, the NIO has maintained its refusal to confirm or deny whether further information is held, in reliance on the exemptions under section 23 and section 24 of the Act.

## Analysis

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### **Section 23: information provided by or relating to security services Section 24: national security**

23. Under section 1(1)(a) of the Act, a public authority is generally obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny".
24. Where a public authority has relied on an exemption which involves a refusal to confirm or deny whether information is held, the Commissioner must ensure that his Decision Notice does not give any indication as to whether or not information is in fact held by the authority, or, in this case, under which exemption any information held would be exempt. As a consequence, it is not always possible for the Commissioner to comment in great detail on the reliance by a public authority on the exemption concerned.

25. The NIO's explanation for its refusal to confirm or deny is that it maintains that the information sought by the complainant would be exempt by virtue of sections 23(5) and/or 24(2) of the Act. Although the Act does not allow section 24(1) to be applied to information which is exempt by virtue of section 23(1), there is nothing in the Act which prevents an authority from refusing to confirm or deny that it holds information to which either section 23(1) or 24(1) would apply, if such information were held.
26. Under section 23(1), information held by a public authority is exempt from disclosure if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3). These bodies include the Security Service, the Secret Intelligence Service and the Government Communications Headquarters (for the complete list, see the Legal Annex). Under section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3). Section 23 provides an absolute exemption, therefore no consideration of the public interest is necessary.
27. Section 24(2) provides that the duty to confirm or deny does not arise if, or to the extent that, exemption is required for the purpose of safeguarding national security. This section is not subject to the requirement that the information in question must have been provided by, or relate to, one of the bodies listed in section 23(3). The exemption in section 24 is a qualified one and it is therefore necessary to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information. Information (if it were held) concerning communications between the British Government and the IRA could have been supplied by or relate to one of the bodies specified in section 23(3) or it could have been supplied by other bodies or individuals not listed in section 23(3).
28. This approach to the application of sections 23(5) and 24(2) is supported in the Tribunal Decision *EA/2006/0045 Norman Baker vs. Information Commissioner and the Cabinet Office*. In this case the Cabinet Office also sought to rely on 23(5) and 24(2) explaining that relying on section 23(5) alone to neither confirm or deny could itself reveal the fact that one of the security bodies listed in section 23(3) was or could have been involved, therefore it was necessary to rely on both sections 23(5) and 24(2) in order not to reveal any exempt information in a particular case. The Commissioner acknowledges that

in this case the request is of a more general nature, however confirming or denying could still disclose information related to the bodies specified. Therefore relying on both provisions is justified.

29. In relation to this case, the NIO provided more detail relating to the specific request for information and provided further arguments to the Commissioner to support the exclusion of the duty to confirm or deny. The Commissioner has taken these into consideration when reaching his decision but details have not been included in the Decision Notice for the reasons stated above.
30. Having regard to the reasoning of the Tribunal when combined with the reasons given by the NIO for its reliance on the exemptions in sections 23(5) and 24(2), the Commissioner considers that these exemptions were correctly applied in the present case and the NIO was entitled to neither confirm nor deny holding the information requested.
31. However, section 24 is a qualified exemption. Therefore the Commissioner needs to assess whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the NIO holds the information.

### **Public interest test**

32. In its internal review letter the NIO indicated that it could not provide any information in relation to its application of the exemptions. The NIO claimed this was because such information would involve the disclosure of information that itself would be exempt. However, the NIO did provide some details of the public interest arguments it had identified in favour of maintaining the exemptions.
33. Following the Commissioner's intervention the NIO did provide the complainant with more information regarding its consideration of the public interest without revealing whether or not the information was held. In addition, the NIO provided the Commissioner with further arguments at the meeting of 12 January 2009.
34. The only argument put forward by the NIO in favour of confirming or denying whether it held information, was that there is a "strong public interest in transparency and accountability".
35. In favour of maintaining the exemptions, the NIO put forward a number of arguments. The NIO drew attention to the fact that the complainant had requested information relating to the potential existence of covert channels of communication between the British Government, a political party and a terrorist paramilitary organisation.



To confirm or deny whether such information was held would harm national security, in that such channels of communication would be by their nature highly sensitive. The NIO also argued that, if it were required to confirm or deny whether it held information in this case, inferences might be drawn in relation to other cases, and this could have harmful effects. The NIO reminded the Commissioner of its usual practice of not commenting on the existence of reporting from the security and intelligence agencies, due to the potential adverse impact on agency operations.

36. The complainant put forward arguments in favour of confirming or denying what information was held. In particular the complainant pointed out that a previous NIO Minister had released details of communications with Sinn Féin. The complainant drew attention to the fact that a substantial amount of information had been released into the public domain, including a number of books written by individuals involved in the hunger strikes. The complainant also noted that, at the time of his request, the identity of a Secret Intelligence Service ("SIS" or "MI6") officer who maintained contact with the PIRA throughout the hunger strikes, was in the public domain.
37. The Commissioner has considered these arguments and weighed the competing public interest factors for and against confirming or denying whether information is held. The Commissioner recognises that there is a general public interest in the NIO disclosing whether or not it holds information on a particular topic. In addition, the Commissioner acknowledges that the hunger strikes remain an emotive and sensitive issue, and that there is considerable interest on the part of the public and media in relation to what happened at this time. The Commissioner notes that the information in question, if held, would have been 25 years old at the time of the request.
38. However the Commissioner is mindful of the fact that what interests the public is not the same as what is in the public interest. Also, the Commissioner is aware that considerable sensitivities remain even years after the hunger strikes, and therefore in this case the passage of time has not reduced the significance of disclosure in the way it often does.
39. The Commissioner appreciates the complainant's argument that significant information has already been disclosed into the public domain, and that this decreases any risk of harm by the NIO confirming or denying what information it holds. However, as the Commissioner has explained to the complainant, the existence of information in the public domain can not always be equated to the official disclosure of information by a public authority.



40. Given the very considerable weight inherent in the need to safeguard national security, where the exclusion of the duty to confirm or deny has been claimed the Commissioner considers that there must be equally weighty public interest factors in favour of confirming or denying whether the information requested is held in order to justify overturning the public authority's decision. He is not satisfied that such factors apply in the present case. Therefore he has concluded that the public interest in maintaining the exclusion of the duty to confirm or deny outweighs that in disclosing whether relevant information is held.

### **Section 27: prejudice to international relations**

41. As explained above, the NIO sought to apply this exemption to one piece of information, which the Commissioner has inspected.
42. The exemption at section 27(1) applies if its disclosure would, or would be likely to, prejudice international relations. The NIO did not at any stage specify which subsection of section 27 it sought to rely on, and at the internal review stage the NIO did not explain how it considered the exemption to be engaged. On 27 February 2009 the NIO confirmed to the complainant its view that disclosure of the information would be likely to prejudice relations between the UK and Irish governments.
43. Having considered the NIO's letter of 27 February 2009, the Commissioner is of the view that it is reasonable for him to conclude that the NIO is in effect seeking to rely on the exemption at section 27(1)(a). This subsection relates to information where disclosure would be likely to prejudice relations between the UK and any other State, in this case the Republic of Ireland.
44. In considering whether the exemption is engaged the Commissioner is mindful of the findings of the Information Tribunal when it considered the meaning of 'would be likely to prejudice'. It stated that for this test to apply:

*"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk."*<sup>1</sup>

45. The Tribunal has also commented on the nature of the prejudice which the section 27(1)(a) exemption is designed to protect. It stated that:

*"Prejudice is not defined, but we accept that it imports something of detriment in the sense of impairing relations or interests or their*

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<sup>1</sup> John Connor Press Associates v Information Commissioner [EA/2005/005], para. 15.

*promotion or protection and further we accept that the prejudice must be 'real, actual or of substance'...*<sup>2</sup>

46. The Tribunal went on to say that:

*"...prejudice can be real and of substance if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in terms of quantifiable loss or damage."*<sup>3</sup>

47. The NIO advised the complainant that "many of those involved in the original issue are still intimately involved in the ongoing political process". The NIO also drew the complainant's attention to the fact that the two governments were preparing to complete the devolution of policing and justice in Northern Ireland. The NIO expressed the view that disclosure of the information would have an adverse impact on the relationship between the two governments, and could consequently impact on the completion of devolution.
48. The complainant disputed the NIO's arguments in relation to section 27, suggesting that it was unlikely that any Irish government official or politician who was involved in 1981 would now be involved. The complainant also argued that the completion of devolution should not prevent the disclosure of historical information.
49. In deciding whether or not the exemption is engaged, the Commissioner has had regard to the nature of the withheld information, which he has inspected. Again, the Commissioner is mindful of the need to ensure that he does not disclose exempt information in this Notice. However the Commissioner is satisfied that, given the nature of the withheld information, and the arguments put forward by the NIO, that disclosure of the specific information would be likely to make relations more difficult with the Republic of Ireland. Therefore the Commissioner is satisfied that the exemption is engaged.
50. Section 27(1)(a) is a qualified exemption, so the Commissioner must then consider the public interest test. Again, the only argument put forward by the NIO in favour of disclosing the information, was that there is a "strong public interest in transparency and accountability". The NIO did however provide some arguments in favour of maintaining the exemption:

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<sup>2</sup> Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence [EA/206/0040], para. 80.

<sup>3</sup> *Ibid*, para. 75.

- Disclosure would undermine the willingness of other States to engage with the NIO in discussing issues
  - Disclosure would provoke a negative reaction from other States that supplied information in a way that would damage the UK's relations with them or their ability to protect and promote UK interest
  - Disclosure would result in other States disclosing information supplied by the UK, contrary to the UK interest.
51. The NIO expanded on these arguments during discussions with the Commissioner's staff on 12 January 2009, however details of these discussions would involve the disclosure of exempt information, so cannot be included in this notice.
52. In favour of disclosing the information, the Commissioner has had regard to the general arguments expressed in relation to sections 23 and 24. The Commissioner has taken account of the significant public interest in informing and educating the public about issues of historical and political significance, however sensitive they may be.
53. However, the Commissioner has also had regard to the nature and content of the withheld information itself. The Commissioner is of the opinion that disclosure of the withheld information would not appreciably improve the public's understanding of how the hunger strike issue was handled. This in itself is not a reason to withhold the information, but the Commissioner considers that it is important to balance the potential benefit of disclosure with the potential harm it might cause.
54. The Commissioner has not seen any evidence to suggest that the NIO has consulted the Irish government in relation to the potential release of the withheld information. However the Commissioner has seen evidence to suggest that disclosure of the information would be damaging to British-Irish relations, and this in itself would not be in the public interest. The Commissioner notes that individuals from the UK and the Republic of Ireland were involved in this issue, and that discussion of individuals' roles would be likely to cause discomfort not only to those States, but also to those individuals. The Commissioner is of the view that causing offence or discomfort to individuals involved in diplomatic relations would be likely to make those relationships more difficult in the future. The Commissioner considers this to be a particularly strong public interest argument for maintaining the exemptions.
55. The Commissioner also appreciates the importance generally of maintaining good relations with other States, particularly in relation to

sensitive and historically difficult issues. The Commissioner is minded to accept the NIO's argument that if the withheld information were to be disclosed, it could damage relations with other States, who were involved in similarly sensitive issues.

56. The Commissioner has carefully considered all the arguments put forward both in favour of disclosing the information and in favour of maintaining the exemption. The Commissioner is of the view that the NIO did not sufficiently explain its public interest considerations to the complainant, nor did it identify specific public interest arguments in favour of disclosing the information. However the Commissioner considers that an authority's apparent weakness in considering the public interest test does not in itself mean that information should be disclosed.
57. In this particular case the Commissioner has had particular regard to the ongoing political situation in Northern Ireland, and the desirability of maintaining good relations with the Republic of Ireland and other States generally. For the reasons set out above, and in light of the additional arguments put forward by the NIO, the Commissioner finds that there are strong public interest arguments for maintaining the exemption in this case. The Commissioner concludes that the public interest in maintaining the exemption outweighs that in disclosing the withheld information.

## **Procedural requirements**

### **Section 1(1)(a): duty to confirm or deny whether information is held**

58. Section 1(1)(a) of the Act requires a public authority to confirm or deny whether it holds information of the description specified in a request. As explained above the NIO initially claimed that it did not hold any information relevant to the request. The NIO later revised this to state that it held some information, and refused to confirm or deny whether it held further information.
59. The Commissioner is satisfied that the NIO correctly refused to confirm or deny whether it held information in relation to the request in reliance on sections 23 and 24 of the Act. However, the NIO did hold some information which it subsequently provided to the complainant, and it also held information which was withheld under section 27. Therefore the Commissioner finds that the NIO only partly complied with its obligations under section 1(1)(a).

### **Section 1(1)(b): duty to provide information**

60. Section 1(1)(b) of the Act requires a public authority to provide information to an applicant in response to a request. The Commissioner notes that the NIO did provide the complainant with some information on 9 November 2006, and further information on 27 February 2009. The Commissioner is of the view that this information ought to have been disclosed to the complainant at the time of his request. Therefore the Commissioner concludes that the NIO failed to comply with section 1(1)(b) of the Act in relation to this information.

### **Section 10(1): time for compliance**

61. Section 10 of the Act states that a public authority must comply with section 1(1) promptly, and in any event not later than twenty working days after the request has been received.
62. As explained above, the Commissioner is of the view that the NIO failed to communicate some information to the complainant within the statutory time limit. Therefore the Commissioner finds that the NIO failed to comply with section 10(1) in relation to this information.

### **Section 17: refusal notice**

63. Where a public authority refuses a request for information it is required under section 17(1) of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon (see the legal annex for more details). This notice must be provided within the timescale set out in section 10(1), no later than twenty working days following the date the request was received. Section 17(2) provides that a public authority may take additional time to consider the public interest in relation to a qualified exemption, if the authority is satisfied that the exemption is engaged. However the refusal notice issued under section 17(1) must still contain the following elements:
- i) an explanation as to which exemptions are being applied, and why
  - ii) confirmation that the public interest test is still under consideration
  - iii) an estimate of the date by which the authority expects to reach a decision in relation to the public interest test
  - iv) details of the applicant's right of appeal under section 50 of the Act.
64. The NIO initially claimed that it did not hold the requested information, but this was remedied at the internal review stage. However on 29

August 2006 the NIO advised that it held some information and, while it did not provide any information, it did not cite any exemptions. The NIO's letter of 9 November 2006 did cite reliance on a number of exemptions, although it did not explain what was being withheld (in relation to the section 27 exemption), nor did it explain why this information was being withheld. The Commissioner is minded to accept the letter of 9 November 2006 as the NIO's substantive refusal notice in this case.

65. However, the Commissioner is of the view that the NIO's refusal notice of 9 November 2006 did not comply with the requirements of section 17(1), 17(2) and 17(3) as it did not contain the elements referred to above. In addition, the refusal notice was issued nearly six months after the request was submitted, well outside the statutory time limit. The Commissioner also concludes that the refusal notice inadequately communicated the NIO's position to the complainant, as it did not contain sufficient information on the application of the exemptions. The Commissioner notes that the NIO did provide a more detailed explanation to the complainant on 27 February 2009, and expects that the NIO will take steps to ensure this lack of detail does not recur in relation to future refusal notices.

## The Decision

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66. The Commissioner's decision is that the NIO dealt with the following elements of the request in accordance with the requirements of the Act:
- The NIO correctly applied the exemption at section 27 to some information,
  - The NIO correctly applied the exemptions at section 23 and 24 to neither confirm nor deny whether it held further information.
67. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- Section 17(1), (2) and (3) in that the NIO failed to provide an adequate refusal notice to the complainant.
  - The NIO initially claimed that it did not hold information which it later provided to the complainant, thereby breaching section 1(1)(b).
  - The NIO failed to communicate this information to the applicant within the time limit set out at section 10(1).

## Steps Required

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68. The Commissioner does not require any steps to be taken.

## Other matters

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69. Although it does not form part of this Decision Notice the Commissioner notes the complainant's comment that the NIO had failed to provide "proper advice and help" in relation to his request.
70. The complainant's request of 26 May 2006 included a request for assistance "in the event that the information is held by another department". The NIO did not address this part of the request in any of its correspondence with the complainant. However, the NIO accepted in its correspondence to the Commissioner of 14 October 2008 that it ought to have advised the complainant that it could only confirm whether the NIO itself held relevant information, not advise him what other departments might hold.
71. The Commissioner accepts that the NIO was under no obligation to advise the complainant of information held by other public authorities. However, given the high profile of the hunger strikes, the Commissioner is of the view that the NIO would have been likely to know whether relevant information may be held by other government departments. The Commissioner therefore considers that the NIO should have advised the complainant of this, and that the NIO may have been able to advise the complainant which department to approach.



## Right of Appeal

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72. 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  
Arnhem House  
31, Waterloo Way  
LEICESTER  
LE1 8DJ

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 30<sup>th</sup> day of March 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex: Relevant statutory obligations

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1. **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.

2. **Section 10** provides that:

(1) ... 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.

3. **Section 17(1)** provides that:

A public authority which ... 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.

**Section 17(3)** provides that:

A public authority which ... is to any extent relying on a claim that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information, or on a claim that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing

the information must either in the notice under section 17(1) or in a separate notice within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, on a claim that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

4. **Section 23(1)** provides that:

Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

**Section 23(2)** provides that –

A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

**Section 23(3)** provides that –

The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
  - (b) the Secret Intelligence Service,
  - (c) the Government Communications Headquarters,
  - (d) the special forces,
  - (e) the Tribunal established under section 65 of the Regulation Investigatory Powers Act 2000,
  - (f) the Tribunal established under section 7 of the Interception Communications Act 1985,
  - (g) the Tribunal established under section 5 of the Security Service Act 1989,
  - (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
  - (i) the Security Vetting Appeals Panel,
- of
- of

- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.

**Section 23(4)** provides that –

In subsection (3)(c) "the Government Communications Headquarters" includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

**Section 23(5)** provides that –

The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

5. **Section 24(1)** provides that –

Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

**Section 24(2)** provides that –

The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

6. **Section 27(1)** provides that –

Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.