

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 11 August 2015

**Public Authority:** Office of the First Minister and deputy First Minister

**Address:** Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to expenses claimed by special advisers in the Office of the First Minister and deputy First Minister (OFMDFM). OFMDFM has failed to respond to the request; therefore the Commissioner's decision is that OFMDFM has failed to comply with section 10(1) 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, a refusal notice should be issued that complies with the requirements of section 17 of the FOIA which should include the outcome of any public interest considerations).
  - Secondly, and subject to the above, if the information is held the public authority must either disclose the requested information or, if it wishes to withhold any information, issue a refusal notice in relation to the information it wishes to withhold (which should include the outcome of any public interest considerations) 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**

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4. On 18 March 2015 the complainant requested the following information from OFMDFM:

*"Under the Freedom of Information Act, please provide me with the following:*

- 1) The total amount claimed in expenses by each OFMDFM special adviser for each year since 2007;*
- 2) A copy of all expense claims (and copies of receipts) by OFMDFM special advisers since January 1, 2014."*

5. The complainant wrote to OFMDFM on a number of occasions as he had not received a response to his request. Most recently, on 17 June 2015 OFMDFM advised the complainant that his request remained under consideration.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 17 June 2015 to complain that he had not received a response to his request.
7. The Commissioner wrote to OFMDFM on 18 June 2015 to request that it respond to the complainant's request. The Commissioner indicated that he would issue a decision notice if OFMDFM failed to provide the complainant with a substantive response within ten working days.
8. The Commissioner's correspondence was acknowledged but at the time of issuing this decision notice OFMDFM had not responded to the complainant's request.

## **Reasons for decision**

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### **Section 1: general right of access** **Section 10(1): time for compliance**

9. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held

that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant. Both provisions are subject to exemptions under the FOIA but a valid refusal notice must be issued to the extent that this is the case.

10. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
11. Despite the Commissioner's intervention, OFMDFM has failed to respond to the complainant's request. OFMDFM has failed to confirm or deny that it holds the requested information, and has neither disclosed the requested information nor provided a valid refusal notice. The Commissioner therefore finds OFMDFM in breach of section 10(1) of the FOIA.

## **Other matters**

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12. Following a number of adverse decision notices the Commissioner formally monitored OFMDFM's compliance with section 10 of the FOIA during 2012-2013. During the monitoring period OFMDFM's compliance improved, but the Commissioner has recently received a number of complaints about failure to comply with section 10. The Commissioner has resolved most of these complaints informally, although he did issue a decision notice in April 2015.<sup>1</sup>
13. In June 2015 the Commissioner issued an enforcement notice<sup>2</sup> requiring another Northern Ireland department to comply with outstanding requests. The Commissioner has been clear that he expects government departments, including those in Northern Ireland, to comply with information requests within the statutory time limit.

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<sup>1</sup> Decision notice FS50573317

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/enforcement-notices/1431805/enforcement-notice-department-of-health-and-personnel-for-northern-ireland.pdf>

## **Right of appeal**

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14. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
16. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**