

## **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 special advisers' pay. The Office of the First Minister and deputy First Minister (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, then 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 February 2015 the complainant requested the following information from OFMDFM:

*"I refer to [named individual] of the Department of Finance and Personnel's circular to Permanent Secretaries of January 3rd 2013 entitled SPECIAL ADVISERS' PAY AWARD 2012.*

*Under the Freedom of Information legislation I request all records from January 1 2013 to the present date (including drafts, memorandum, emails, diary notes) relating to activities arising from that circular with particular regard to the performance assessments by Ministers of their special advisers. This would include (but is not limited to) the below:*

*Communication from the Permanent Secretary or civil servants acting on his/her behalf to each Minister in the Department advising him/her of the pay change and the response from the Minister;*

*Communication from the Permanent Secretary or civil servants acting on his/her behalf to each Minister in the Department's Special Adviser advising him/her of the pay change and the response from the Special Adviser;*

*Any communication between Ministers and Special Advisers on the matter;*

*All documents relating to the performance assessment that was undertaken and recorded in each case; and*

*Whether the full award was granted in each case and the justification from same."*

5. OFMDFM acknowledged receipt of the request on 4 March 2015.
6. The complainant wrote to OFMDFM on 20 April 2015, 14 May 2015 and 9 June 2015, asking that it respond to his request.
7. On 14 May 2015 and 9 June 2015 OFMDFM apologised for the delay but advised the complainant that his request remained "under consideration".

## Scope of the case

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8. The complainant contacted the Commissioner on 25 June 2015 to complain that he had not received a response to his request.
9. The Commissioner wrote to OFMDFM on 6 July 2015 to request that it respond to the complainant's request. Despite this correspondence OFMDFM did not provide any further response to the complainant.

## Reasons for decision

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

10. 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.
11. 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.
12. 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.
13. The Commissioner therefore finds OFMDFM in breach of section 10(1) of the FOIA.

## Other matters

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14. The Commissioner wishes to record his disappointment that OFMDFM continues to demonstrate poor levels of compliance with the requirements of the FOIA. In the context of austerity, budgets cuts and an increased focus on value for money, the Commissioner is particularly concerned that each complaint of non-response he receives generates work for his staff, as well as OFMDFM staff. The corresponding demand on both organisations' staff and resources could be substantially reduced

Reference: FS50587064

if not avoided, if OFMDFM responded within the statutory time for compliance.

## Right of appeal

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15. 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)

16. 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.
17. 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**