

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2024

Public Authority: Northern Ireland Office
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant requested access to a number of files held by the Northern Ireland Office (the NIO). The NIO exceeded the statutory time limit for compliance in issuing a substantive response.
2. The Commissioner's decision is that the NIO failed to comply with sections 1(1)(a), 1(1)(b), 10(1) and 17(3) of FOIA. No steps are required.

Request and response

3. On 10 August 2023 the complainant wrote to the NIO and requested access to the following closed records:

"CJ 4/10311: Brian Nelson
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4. The NIO responded on 8 September 2023. It stated that some of the requested information was exempt from disclosure by virtue of the exemptions at sections 38(1)(b) (health and safety) and 40(2) (third party personal data) of FOIA.
5. The NIO further stated that it required additional time in order to consider the public interest test in respect of section 38(1)(b).

6. The NIO issued a further response on 3 November 2023. This also stated that the NIO required more time to consider the public interest test. Similar holding responses were issued on 1 March 2024 and 29 March 2024.

Scope of the case

7. The complainant contacted the Commissioner on 10 November 2023 to complain about the way their request for information had been handled. Specifically they complained about the time taken to consider the public interest and issue a substantive response to the request.
8. The Commissioner contacted the NIO to remind it of its obligations under FOIA. The NIO advised the Commissioner that it had been required to consult with third parties regarding possible disclosure of the requested information. It then needed to redact the information before issuing a substantive response to the complainant.
9. Following the Commissioner's intervention the NIO issued a substantive response to the complainant on 5 April 2024. The NIO confirmed that it had now completed its consultation process, and was liaising with The National Archives (TNA) to transfer the redacted files for public access.
10. The NIO cited the exemption at sections 23(1) (security services), 24(1) (national security), 26(1)(a) and (b) (defence) and 40(2) (third party personal data) of FOIA in respect of the redactions made to the files. The NIO further confirmed that it was unable to locate one of the requested files, therefore its position under FOIA was that it did not hold that information.
11. The NIO anticipated that the redacted files would be made available to the public, through TNA, by January 2025. However the NIO offered to make the information available for inspection by the complainant ahead of the transfer to TNA.
12. In light of the above the Commissioner's decision in this case is limited to the time taken to issue a substantive response to the request. The Commissioner has not investigated the NIO's reliance on the exemptions cited.

Reasons for decision

Section 1: general right of access

Section 10(1): time for compliance

Section 17: refusal notice

13. Section 1(1)(a) of 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 unless a valid refusal notice has been issued.
14. Section 10(1) requires that the public authority comply with section 1(1)(a) and section 1(1)(b) promptly, and in any event no later than 20 working days after the date of receipt of the request.
15. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it may have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
16. FOIA does not define a "reasonable" extension of time. However the Code of Practice issued under section 45 of FOIA¹ states that

"it is best practice for an extension to be for no more than a further 20 working days".
17. This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
18. In this case the total time taken by the NIO far exceeded 40 working days. The Commissioner acknowledges that the delay is not entirely within the control of the NIO in this case. He is mindful of the particular challenges experienced by the NIO in considering requests for information that is in the process of being prepared for transfer to TNA.
19. However he does not consider that this justifies the inordinate time taken to issue a substantive response to the complainant. Accordingly the Commissioner finds that the NIO failed to comply with sections 1(1)(a), 1(1)(b), 10(1) and 17(3) of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF