

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 21 January 2013

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

Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant requested information relating to the recruitment of teachers in Northern Ireland being exempted from equality legislation. The Office of the First Minister and deputy First Minister (OFMDFM) took over ten months to respond to the request. The Commissioner finds that OFMDFM breached sections 1 and 10 of the FOIA, but as the request has now been answered he does not require any steps to be taken.

Request and response

2. The complainant in this case originally made his request to the Northern Ireland Office (the NIO) on 30 November 2011. On 21 December 2011 the NIO advised that it did not hold the requested information and suggested that the complainant contact the Department of Education for Northern Ireland (DENI).
3. The complainant submitted his request to DENI on 21 December 2011. On 22 December 2011 DENI transferred the request to OFMDFM. The request was as follows:

Please may I have copies of the papers on the policy making and drafting process in relation to the exemption in Article 15 (2) on the recruitment of teachers in Northern Ireland in the EU Council Directive (2000/78) that established a general framework for equal treatment in employment and occupation.

Article 15 reads "Northern Ireland... 2. In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation."

4. OFMDFM acknowledged receipt of the request on 30 December 2011. Despite further correspondence, OFMDFM did not provide a substantive response to the complainant's request. OFMDFM advised the complainant on 25 June 2012 that a response would be provided "in due course", and advised the complainant that he could request an internal review of the way his request had been handled.
5. On 26 June 2012 the complainant asked OFMDFM to conduct an internal review as offered. The complainant also asked OFMDFM to explain why he had not yet received a response to his request, and to indicate when such a response would be provided.
6. On 2 July 2012 OFMDFM advised the complainant that his request was "still under consideration". No date was given for a response to be issued. OFMDFM advised that in these circumstances it did not feel an internal review would be of any practical benefit. OFMDFM acknowledged that it had failed to meet the statutory time for response, and advised the complainant of his right to complain to the Commissioner.
7. The complainant contacted the Commissioner on 6 August 2012 to complain that he had still not received a response to his request.
8. The Commissioner wrote to OFMDFM on 1 October 2012 to remind it of its obligations under the FOIA.
9. The complainant remained dissatisfied and on 5 October 2012 he lodged an application for judicial review with regard to OFMDFM's failure to respond to his request.
10. On 15 October 2012 OFMDFM provided some of the requested information to the complainant. On 7 November 2012 OFMDFM provided the remainder of the requested information except for an extract from one document which it withheld under section 27 of the FOIA (prejudice to relations with another State).
11. Following OFMDFM's response the complainant withdrew his application for judicial review.

Scope of the case

12. Two issues were resolved during the Commissioner's investigation. The Commissioner inspected the information withheld under section 27 of the FOIA, and was of the view that this information did not in fact fall within the scope of the complainant's request. The complainant accepted the Commissioner's opinion and was content not to receive this information.
13. The complainant also asked the Commissioner to investigate whether he had received all the requested information, as the information provided contained references to other documents which had not been provided.
14. The Commissioner raised the complainant's queries with OFMDFM. On 3 January 2013 OFMDFM provided a detailed explanation to the Commissioner, which it agreed could be provided to the complainant. The complainant advised the Commissioner that, although he was surprised that some of the documents identified were not held by OFMDFM, he accepted its explanation.
15. In light of the above the Commissioner's decision in this case relates only to the time taken to respond to the request.

Reasons for decision

Section 1: General right of access

Section 10(1): Time for compliance

16. Section 1(1)(a) of the FOIA requires that a public authority confirm or deny to the complainant that the requested information is held. 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.
17. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than twenty working days after the date of receipt of the request.
18. In this case DENI advised that it had transferred the complainant's request transferred to OFMDFM on 21 December 2011, although OFMDFM said that the transfer had been accepted on 29 December 2012. Therefore the Commissioner is minded to accept 29 December 2012 as the date of receipt for the purposes of the FOIA. However it was not until 7 November 2012, over ten months later, that the complainant received all the requested information.

19. The Commissioner asked OFMDFM to explain how it handled the complainant's request. The information provided by OFMDFM indicated that regular communication took place between various officials and business areas responsible for managing the request. However no substantive progress appears to have been made (for example, preparation of a draft response) until the Commissioner wrote to OFMDFM on 1 October 2012 and the complainant himself lodged the judicial review application on 5 October 2012. The matter was also reported in the media.
20. The Commissioner notes that from this point the request was progressed more quickly with a partial response provided to the complainant on 15 October 2012. However OFMDFM did not provide the remainder of the requested information until 7 November 2012.
21. It is clear that OFMDFM failed to comply with section 1(1)(b) and section 10(1), given that it far exceeded the time for compliance set out in the FOIA. As OFMDFM did not confirm or deny that it held the requested information until it actually provided the information, the Commissioner also finds that OFMDFM failed to comply with section 1(1)(a).

Other matters

22. In addition to the technical breaches identified above, the Commissioner wishes to record his disappointment at the scale of the delay in responding to the request. The Commissioner's view is that it is simply unacceptable to take in excess of ten months to respond to any information request.
23. The Commissioner is also concerned at the lack of meaningful communication with the complainant. The Commissioner is of the opinion that OFMDFM failed to inform the complainant as to the reasons for the continuing and excessive delay, and failed to provide any indication as to when a substantive response would be issued. Again the Commissioner finds this unacceptable. An explanation of the ongoing delay would at least have kept the complainant informed as to the progress of his request.
24. Furthermore, although it does not form part of the decision in this case the Commissioner considers it appropriate to include details of the enforcement action he is currently taking against OFMDFM.

25. On 21 December 2012 the Commissioner announced that OFMDFM is one of four public authorities that the ICO will monitor between 1 January 2013 and 31 March 2013. Each authority will be required to provide the Commissioner with statistics demonstrating its time for compliance with information requests.
26. The authorities were selected as they failed to respond to 85% of FOI requests within the time limit of 20 working days or had exceeded the time limit by a significant margin on numerous occasions. OFMDFM performance statistics for all requests received during 2011 showed that only just over half were answered on time, with further delays encountered in 2012.
27. Further information is available on the ICO website:

http://www.ico.gov.uk/news/latest_news/2012/ico-announces-latest-list-of-authorities-for-foi-monitoring-21122012.aspx

Right of appeal

28. 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 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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 – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF