

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 4 July 2011

**Public Authority:** Office of the First Minister and deputy First Minister  
**Address:** Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SR

### Summary

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The complainant requested information relating to special advisers within the Northern Ireland government departments. OFMDFM failed to respond to the request within the time limit set out at section 10(1) of the Act. As OFMDFM has now responded the Commissioner requires no 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.

### The Request

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2. On 25 October 2010 the complainant made a request to the Department of Finance and Personnel for Northern Ireland (DFP):

*"Under the Freedom of Information Act, could you provide me with details of:*

1. *Payments to all special advisers for each year since 1998;*
2. *The number of special advisers each year since 1998;*
3. *Whether special advisers received bonuses in any of those years and, if so, how much;*
4. *Whether special advisers' salaries are scheduled to rise in coming years or will be frozen due to the economic situation;*

5. *The amount paid to special advisers in OFMDdFM for each year since 1998, as compared to special advisers' remuneration in other departments".*
3. On 3 November 2010 DFP advised the complainant that it did not hold some of the requested information, and offered to transfer the request to the relevant departments.
4. The complainant agreed to the transfer of his request, and subsequently received responses from most of the other departments. The complainant did not however receive a response from the Office of the First Minister and deputy First Minister (OFMDFM) and this forms the basis of his complaint to the Commissioner.

## **The Investigation**

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### **Scope of the case**

5. On 7 June 2011 the complainant asked the Commissioner to investigate OFMDFM's continuing failure to respond to his request.

### **Chronology**

6. The Commissioner contacted OFMDFM on 9 June 2011 to remind it of its obligations under the Act. The Commissioner also requested an explanation as to why the request had not been dealt with according to the timescales set out in the Act.
7. OFMDFM responded to the Commissioner on 16 June 2011. On the same day OFMDFM provided a substantive response to the complainant.

## **Analysis**

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### **Substantive Procedural Matters**

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

8. Section 1(1)(a) of the Act 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.

9. 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.
10. The Commissioner notes that the complainant originally made his information request to DFP, who advised that it did not hold all the requested information. In line with Part 3 of the Code of Practice issued under section 45 of the Act<sup>1</sup> DFP offered to transfer the request to the departments it considered held the information. The complainant was content for his request to be transferred, and this took place on 3 November 2011. It is accepted by OFMDFM that the transferred request was received by it on 3 November 2011, so this is the date of receipt for the purposes of section 10(1).
11. The Commissioner sought and received from OFMDFM a detailed explanation of the steps taken to deal with the request before the complaint was made. The chronology provided by OFMDFM indicates that the delay in responding was a result of two draft responses being considered and rejected by the Private Office. Although a revised draft was submitted for Ministerial approval on 5 January 2011, no further action appears to have been taken until the Commissioner contacted OFMDFM in June 2011.
12. Despite the delays outlined above, the Commissioner notes that OFMDFM was able to provide a response to the complainant's request within a week of receiving a letter from the Commissioner.
13. The Commissioner therefore finds OFMDFM in breach of section 10(1) of the Act as it failed to provide either the requested information or a valid refusal notice within the statutory time limit.

## **The Decision**

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14. The Commissioner's decision is that OFMDFM did not deal with the request for information in accordance with the Act in the following respect:
  - Section 10(1) in failing to comply with the statutory time for response.

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<sup>1</sup> <http://www.justice.gov.uk/downloads/guidance/freedom-and-rights/foi-section45-code-of-practice.pdf>

## **Steps Required**

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15. As OFMDFM has now responded to the request, albeit only as a result of the Commissioner's intervention, the Commissioner requires no further steps to be taken.

## **Other Matters**

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16. The Commissioner notes that this is the third Decision Notice he has issued in three months relating to a failure by OFMDFM to respond to a request. The Commissioner has expressed his concern to OFMDFM and will consider whether further action is necessary.

## Right of Appeal

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17. 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: 0300 1234504  
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)

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 4<sup>th</sup> day of July 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager**

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

## Legal Annex

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### Freedom of Information Act 2000

#### General Right of Access

**Section 1(1) provides that -**

"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."

#### Time for compliance

**Section 10(1) provides that –**

"Subject to subsections (2) and (3), 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."