

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 September 2006

Public Authority: The Department for Social Development Northern Ireland
Address: 1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT4 3TT

Summary Decision

1. The complainants requested information from the Department for Social Development relating to complaints made against the Community Development Agency between 2000 and 2005. The Department withheld the information, relying on the exemptions under sections 30, 38, 40, 41 and 44 of the Act. Following discussion with the Commissioner, the Department provided some of the information requested. The Commissioner is satisfied that the remainder of the information is exempt under section 41, and does not therefore require the Department to take any further steps in relation to the complainants' request.

The Commissioner's Role

2. The Commissioner's role 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

3. The complainants have advised that on 23 February 2005 they requested the following information from the Department:

"We would ask for correspondence concerning:

- allegations that were made about the Community Development Agency under the headings of NCDA, CDA, Newtownabbey Community Development Agency or The Community Development Agency between January 2000 and January 2005.

We are aware that the Department received several communications concerning the above. We would also request the Department's replies to these communications, which would have involved the Voluntary Activity Unit and the Community and Voluntary Unit."

4. The Department responded on 23 March 2005, confirming that it held the information requested. The Department advised the complainants that the exemptions under sections 30(1) and 30(2) of the Act applied to the information they had requested. These exemptions relate to investigations conducted by a public authority. The Department further advised that these exemptions were qualified, and that the Department required an additional 17 days to consider the public interest arguments.
5. The Department wrote to the complainants again on 21 April, stating that it considered that the information requested was not only exempt under sections 30(1) and 30(2), but that the information was also exempt by virtue of sections 38 (health and safety), 41 (information provided in confidence) and 44 (statutory prohibitions on disclosure) of the Act. The Department advised that it had considered the public interest test in relation to sections 30 and 38, which were qualified exemptions, and considered that the information requested should be withheld. The Department also advised that the section 41 and 44 exemptions were absolute, and so the Department had not been required to carry out a public interest test in relation to these exemptions. The Department indicated that it must also prevent disclosure of information which would contravene any of the data protection principles or the Human Rights Act 1998.
6. The complainants requested an internal review of the Department's decision on 20 May 2005. The Department responded on 21 June, advising that it upheld its original reliance on the exemptions under sections 30(1), 30(2), 38, 41 and 44 of the Act.

The Investigation

Scope of the case

7. On 2 September 2005 the complainants contacted the Commissioner to complain about the way their request for information had been handled. The complainants specifically asked the Commissioner to consider whether or not the Department had acted correctly in withholding the requested information. The complainants advised the Commissioner by way of background that, following an investigation into the Community Development Agency, no evidence was found to support the allegations made, and therefore they felt the public should be informed as to the nature and source of the allegations.

Chronology of the case

8. The Commissioner wrote to the Department on 30 January 2006, requesting a copy of the withheld information. The Department contacted the Commissioner

- on 27 February 2006 and indicated that it would need to redact some details from the information before providing it to the Commissioner. The Department felt that the information was too sensitive to be provided in an unredacted form.
9. The Commissioner wrote to the Department again on 6 March. The Commissioner requested further details of the Department's reliance on the exemptions claimed, and again requested sight of the withheld information.
 10. The Department responded on 14 April, enclosing the withheld information in redacted form. The Department also provided some information on their reliance on the exemptions, and advised the Commissioner that it was no longer seeking to rely on the exemption under section 44 (statutory prohibitions on disclosure).
 11. Following further discussion with the Commissioner, the Department provided the unredacted information to the Commissioner on 17 May 2006.
 12. Having considered the Department's arguments in the context of the withheld information the Commissioner wrote to the Department on 23 June to request further explanation of the Department's reliance on the exemptions under sections 30, 38 and 41 of the Act. The Commissioner noted that the Department had cited the data protection principles in its refusal notice of 21 April, and asked the Department to confirm whether it was also seeking to rely on the section 40 exemption (personal information).
 13. The Commissioner noted that the Department had not confirmed to the complainants what information it actually held which fell within the scope of their request. The Department contended that there was no obligation to do so, since the complainants' request had been for "correspondence" rather than specific pieces of information. The Department did not consider that they were under any duty to specify the information held.
 14. The Commissioner advised the Department of his view that it had not provided an adequate response to the complainants. The Commissioner's view was that under section 1(1)(b) of the Act the complainants ought to have been informed what information the Department held. The Commissioner considered that this would also have met the requirements of section 16 of the Act (the duty to provide advice and assistance).
 15. The Department agreed to provide the complainants with a brief description of the information held as follows:
 - i) Letter to the Department dated 14 April 2002
 - ii) Letter to the Department dated 18 March 2003
 - iii) Letter from the Department dated 24 March 2003
 - iv) Letter to the Department dated 25 March 2003
 - v) Letter from the Department dated 3 October 2003

The Department subsequently provided the complainants with copies of the letters sent from the Department (items iii and v above) with the names and addresses of the recipients redacted.

16. In light of the above, the Commissioner's decision in this case relates solely to the information which has been withheld by the Department, namely the letters to the Department at i, ii and iv above, and the names and addresses of the authors.
17. The Department's arguments for withholding the remaining information referred to at paragraph 16 above can be summarised as follows.
18. **Section 30(1):**
The Department holds the information in relation to an investigation which was conducted by the Department with a view to ascertaining whether criminal proceedings were appropriate.
19. **Section 30(2):**
The Department obtained the information from confidential sources, and the providers of this information did so under an expectation of confidentiality.
20. **Section 38:**
The Department had reason to believe that disclosure of the information was likely to put the providers of the information at risk.
21. **Section 41:**
The providers of the information did so under an expectation of confidence. The information was confidential in nature, and unauthorised disclosure would give rise to an actionable breach of confidence.

Analysis

22. As the complainants have now received some of the information they requested, the Commissioner must then consider whether the remaining information is exempt as claimed by the Department.

Exemptions

Section 41: information provided in confidence

23. The Commissioner notes that the Department has applied the section 41 exemption to the contents of the two letters received by the Department, and to the names and addresses of the authors of these letters. In considering whether or not the exemption is engaged, the Commissioner considers that for a breach of confidence to be actionable it must meet the established tests in *Coco V Clarke*¹. The requirements are that the information must have the necessary quality of confidence; it must be imparted in circumstances giving rise to an obligation of confidence; and there is an unauthorised use of that information.
24. The Commissioner is satisfied that the information contained in the letters, and the identities of their authors, was inaccessible to the public at large at the date of

¹ *Coco v Clarke* [1969] RPC 41

the request. Having had sight of the information in question, the Commissioner is also satisfied that it has the necessary quality of confidence, as it relates to serious allegations made against a body which receives public funding. The Commissioner considers that, given the nature of the allegations, there was an expectation on the part of the confiders that the information was to be held in confidence, and that the identity of the confiders was to be protected. The Commissioner is further satisfied that the information was imparted in circumstances giving rise to an obligation of confidence. Although not a prerequisite in every case, the Commissioner has considered the issue of detriment which may be required for a breach of confidence to be actionable. The Commissioner is satisfied that in this case given the extent to which the letters contained serious allegations, damage could be caused by the release of the information.

25. Although section 41 is an absolute exemption, so in itself not subject to the public interest test, the Commissioner recognises that in certain circumstances the public interest may override any duty of confidence. Where there is an overriding public interest in any particular case in disclosing the information the courts have accepted that no duty of confidence is owed. The Commissioner must therefore consider whether there was an overriding public interest at the time of the Complainant's request which favoured disclosure of the information.
26. The Commissioner recognises that there is a strong public interest in the public being informed about government departments investigating allegations of a serious nature against a publicly-funded organisation, whether or not these allegations are upheld. The fact that an investigation was undertaken was in the public domain at the time of the request, as well as the fact that no evidence was found to support the allegations made. However, the nature and source of the allegations were not in the public domain at the time of the request.
27. The Commissioner is also mindful of the public interest in ensuring that people are not discouraged from expressing concerns to investigating bodies by the possibility of their identities, and the information they provide, being made public. When information relating to such concerns is provided to a public authority in confidence, there is a legitimate expectation that this confidence will be protected by that authority. Without this expectation, people may be less willing to express their concerns to public authorities.
28. For the reasons set out above, the Commissioner is satisfied that there is no overriding public interest in disclosure of the information requested, therefore the information withheld by the Department as described at paragraph 16 above is exempt by virtue of the section 41 exemption.

Other exemptions claimed

29. The Commissioner notes that the Department sought to rely on sections 30(1), 30(2), 38 and 40 in relation to the withheld information. As the Commissioner is satisfied that the information is exempt by virtue of section 41 he is not required to make a decision relating to the Department's application of the other exemptions

in this case. However the Commissioner did investigate thoroughly all the exemptions claimed by the Department.

30. With regard to sections 30(1) and 30(2), the Commissioner is of the view that it is unlikely that the exemptions would be engaged, as he is not satisfied that the Department has the statutory authority to decide whether or not a person should be charged with an offence.
31. With regard to section 38, the Commissioner is also of the view that it is unlikely that the exemption would be engaged, as he is not satisfied that there is evidence of a real and significant likelihood of endangerment to the health or safety of any individual if the particular information requested were to be disclosed.
32. With regard to section 40, the Commissioner considers that the names and addresses of the writers of the two letters constitute personal information within the meaning of section 1(1) of the Data Protection Act 1998. The Commissioner is of the view that it is likely that Section 40(2) would apply to the requested information to the extent that disclosing personal data in breach of a duty of confidence is unlawful processing of personal data and, therefore, a breach of the first data protection principle.

The Decision

33. The Commissioner's decision is that ultimately the public authority dealt with the request for information in accordance with the Act, albeit in some respects only as a result of the Commissioner's intervention.

Steps Required

34. In view of the above, the Commissioner does not require the public authority to take any further steps.

Right of Appeal

35. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Reference: FS50087886



Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 21st day of September 2006

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

- (1) 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.

2. **Section 30** provides that:

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.

3. **Section 38** provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

4. **Section 40** provides that:

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

5. **Section 41** provides that:

(1) Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

6. **Section 44** provides that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.