

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 23 June 2010**

**Public Authority:** Northern Ireland Office  
**Address:** 11 Millbank  
London  
SW1P 4PN

### Summary

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The complainant requested information from the Northern Ireland Office (the NIO) relating to the numbers and the costs associated with use of personal panic alarms by senior civil servants. The NIO refused to confirm or deny whether it held the information, citing the exemptions at sections 24 and 38 of the Act. The Commissioner finds that both exemptions have been correctly applied, and that the NIO acted correctly in refusing to confirm or deny whether it held the information. Therefore the Commissioner requires no further 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").

### The Request

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2. On 23 July 2008 the complainant requested the following information from the Northern Ireland Office (the NIO):

"Can you confirm or deny that personal panic alarms have been issued to civil servants in N Ireland?  
Could you tell me the number of personal panic alarms which have been issued in N Ireland to civil servants?"

The total cost of personal panic alarms issued to civil servants in N Ireland."

3. On 1 August 2008 the NIO sought clarification regarding the request and having received this clarification responded to the complainant sometime later in August (date unspecified). At this stage the NIO advised that it could neither confirm nor deny (NCND) whether personal panic alarms are issued to civil servants in Northern Ireland nor whether any further information relating to his request was held by the NIO. The NIO cited the exemptions at section 24(2) and section 38(2) of the Act in support of this stance.
4. On 21 August 2008 the complainant requested an internal review of the NIO's decision.
5. On 7 November 2008 the NIO advised the complainant of the outcome of its internal review. The review upheld the original decision to neither confirm nor deny and provided a brief explanation of the public interest considerations in relation to the exemptions.

## **The Investigation**

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### **Scope of the case**

6. On 18 November 2008 the complainant contacted the Commissioner to complain about the way his request had been handled. As the complainant did not specify any particular grounds of complaint the scope of the Commissioner's investigation included the NIO's handling of the request, the application of the exemptions claimed and the balance of the public interest as it applies to the qualified exemptions cited.

### **Chronology**

7. Unfortunately, due to a backlog of complaints made under section 50 of the Act, there was a delay of more than a year before the investigation commenced.
8. On 24 February 2010 the Commissioner wrote to the NIO to request information relating to its handling of the complainant's request. In particular the Commissioner asked for the NIO's representations regarding its NCND stance.
9. On 30 March 2010 the NIO advised the Commissioner that it would not

- confirm or deny, even to his staff, whether the requested information was held. The NIO maintained that knowledge of the factual position was not necessary for the purposes of the Commissioner's investigation of the complaint.
10. The NIO accepted that there was a public interest in confirming whether it provided personal panic alarms to civil servants in so far as it would indicate whether there is any cost to the taxpayer for providing such a level of protection to those deemed to be at risk. However the NIO contended that the arguments in favour of maintaining the exemptions outweighed these arguments.
  11. On that same date the Commissioner contacted the NIO to express some concern regarding its interpretation of the complainant's request. Despite having received clarification from the complainant, the NIO still appeared to have interpreted the request in a broad manner, commenting generally on the provision of personal security measures rather than specifically on personal protection alarms. Accordingly the NIO had provided general arguments for refusing to either confirm or deny that it held the requested information.
  12. On 16 April 2010 the Commissioner contacted the complainant in an attempt to further clarify this issue. The complainant responded to the Commissioner confirming that his request was for the numbers and costs of 'some kind of personal panic device to summon a quick response from the PSNI'.
  13. Having gained this further clarification the Commissioner again wrote to the NIO asking for specific arguments as to why NCND under the cited exemptions was applicable.
  14. On 4 June 2010 the NIO responded to the Commissioner providing further detailed arguments in support of its position.

## Analysis

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### Exemptions

#### **Section 24(2) – national security** **Section 38(2) – health and safety**

15. Under section 1(1)(a) of the Act, a public authority is generally obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny".

16. Where a public authority has relied on an exemption which involves a refusal to confirm or deny whether information is held, the Commissioner must ensure that his Decision Notice does not give any indication as to whether or not information is in fact held by the authority.
17. The NIO's explanation for its refusal to confirm or deny is that it maintains that the information sought by the complainant would be exempt by virtue of sections 24(2) and 38(2) of the Act.
18. In relation to this case, the NIO provided the Commissioner with a detailed submission relating to the specific request for information and provided further arguments to the Commissioner to support the exclusion of the duty to confirm or deny on the grounds that to do so was required for the purpose of safeguarding national security and minimising risk to the health and safety of individuals.
19. Specifically the NIO was of the view that confirming or denying whether it held relevant information would reveal the type of personal security measures provided/not provided to individuals who were in occupations or posts considered to be important to national security and would be likely to increase their vulnerability to attack. The NIO reminded the Commissioner of its usual practice of not commenting on physical security measures provided to those individuals considered to be under substantial or severe terrorist threat.
20. In relation to s24(2) the Commissioner's view is that the exemption must be required for the purposes of safeguarding national security. In this context 'required' means reasonably necessary and national security means the security of the UK, its system of government and its people.
21. In this instance the Commissioner agrees that the protection of senior civil servants from terrorist attack is an important aspect of national security and that an NCND response to avoid revealing any details of the exact security measures employed is reasonably necessary to meet that aim.
22. The Commissioner is also mindful of the Tribunal's comments in the case of *Baker v the Information Commissioner and the Cabinet Office*<sup>1</sup>, where it was stated that, "The use of a neither confirm nor deny

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<sup>1</sup> EA/2006/0045

response on matters of national security can only secure its purpose if it is applied consistently." (para 48)

23. In relation to section 38(2), the Commissioner's view is that the public authority must be able to point to endangerment which is "real, actual or of substance" and to show some causal link between confirming or denying if information is held and the endangerment.
24. 'Likely to endanger' or as in this instance the likelihood of increasing the vulnerability of civil servants to personal attack, means that the possibility of endangerment must be real and significant and not hypothetical.
25. The NIO argued that to confirm or deny information whether it held the requested information would endanger the health and safety of individuals. The Commissioner has taken the NIO's arguments into consideration when reaching his decision but details have not been included in the Decision Notice for the reasons stated above.
26. The Commissioner considers that the exemptions at section 24(2) and section 38(2) have been correctly applied in the present case.
27. However these exemptions are qualified exemptions and it is therefore necessary to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information.

**Public interest arguments in favour of confirming or denying whether the requested information was held**

28. In its internal review letter the NIO indicated that it could not provide any information to the complainant in relation to its application of the exemptions. The NIO claimed this was because such information would involve the disclosure of information that itself would be exempt. However, the NIO did provide some details of the public interest arguments it had identified in favour of maintaining the exemptions.
29. In addition, the NIO provided the Commissioner with further arguments in its correspondence dated 4 June 2010.
30. The NIO's only argument in favour of confirming or denying whether it held information, was that there may be a public interest in making transparent the costs to the taxpayer of the various levels of protection afforded to those deemed to be at risk. In addition informing the public of the types of measures used to protect civil servants would

demonstrate that the State is fulfilling its Article 2 obligations under the European Convention of Human Rights to those individuals under threat.

**Public interest arguments in favour of maintaining the exemption at s24(2)**

31. The NIO drew attention to the fact that the complainant had requested information relating to personal protection measures provided to civil servants.
32. The NIO stated that to confirm or deny whether such information was held, namely the type of security measures provided or not provided, would not be in the public interest as it would be likely to facilitate the targeting by terrorists of individuals who were in occupations or posts considered to be important to national security.

**Balance of the public interest arguments in relation to section 24(2)**

33. The Commissioner has considered these arguments and weighed the competing public interest factors for and against confirming or denying whether information is held. The Commissioner recognises that there is a general public interest in the NIO disclosing whether or not it holds information on a particular topic.
34. In addition, the Commissioner acknowledges that the NIO has already released information about numbers and costs in relation to individuals covered by the Limited Home Protection Scheme (LHPS) because it believed that it was in the public interest to release information that demonstrated the value for money and transparency of the Scheme. The NIO has not however disclosed any more detailed information about the number of individuals in particular roles or occupations, nor the detail of security measures which may or may not be provided.
35. However the Commissioner is mindful of the fact that what interests the public is not the same as what is in the public interest. The Commissioner gives very considerable weight to the need to safeguard national security. The inherent public interest in the exclusion of the duty to confirm or deny in this case is strong. The Commissioner considers that there must be equally weighty public interest factors in favour of confirming or denying whether the information requested is held before an order for such confirmation or denial should be made. The Commissioner is not satisfied that such factors apply in the present case.

## **Public interest arguments in favour of maintaining the exemption at s38(2)**

36. The NIO contended that it was not in the public interest to compromise its duty to protect individuals deemed to be at risk from terrorist attack. To do otherwise would be likely to increase the likelihood of someone successfully attacking a civil servant, either because they would have a better understanding of what protection measures were in place or because they were aware that no measures existed, thus increasing their vulnerability to attack and endangering their health and safety.
37. The Commissioner's view is that the risk to the safety of individuals as a result of confirming or denying whether the requested information is held must be weighed against the benefit that confirming or denying might bring in terms of informing public debate about the types of personal protection measures provided to individuals.
38. As mentioned previously the Commissioner notes that some information on the LHPS has already been disclosed by the NIO and that this would have informed the public to some extent regarding personal protection measures provided to individuals.
39. Taking this into account, along with the other arguments put forward, the Commissioner has concluded on balance that the public interest in maintaining the exclusion of the duty to confirm or deny in relation to the information requested in this case outweighs that in disclosing whether such information is held.

## **The Decision**

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40. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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41. The Commissioner requires no steps to be taken.

## Right of Appeal

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42. 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: 0845 600 0877

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)

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.

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 23<sup>rd</sup> day of June 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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



## Legal Annex

### Freedom of Information Act 2000

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

Any person making a request for information to a public authority is entitled

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- (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.

**Section 24(1)** provides that –

Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

**Section 24(2)** provides that –

The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

**Section 38(1)** provides that –

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.

**Section 38(2)** provides that –

The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).