

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 16 October 2014

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 has requested information relating to Assembly Questions. The Office of the First Minister and deputy First Minister (OFMDFM) has failed to respond to the request. The Commissioner's decision is that OFMDFM has failed to comply with section 1 and section 10(1) of the FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request: firstly, confirm or deny that the requested information is held. If the information is held OFMDFM must either disclose the requested information or issue a refusal notice in compliance with section 17 of the FOIA.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

4. On 29 July 2014 the complainant requested the following information from OFMDFM (requests numbered by the Commissioner for reference):

"1. Please state (at the date of this request) the number of written Assembly questions submitted to your department which have not been answered within the 10 day limit. I.e. how many questions are late/unanswered?"

2. Please provide a list of all current unanswered questions – what was asked, the MLA which they were tabled by, and the date they were submitted. It would be helpful and appreciated if this list could be provided chronologically (ie oldest first).

3. In the last Assembly year (i.e. to June this year), state how many Assembly questions were sent to your department and how many were (a) answered (b) outstanding.

Please note that I consider a question answered even if the Minister has been unable to provide some or all of the information. I am seeking questions which are 'awaiting answer'".

5. OFMDFM acknowledged receipt of the request on 30 July 2014.
6. The complainant did not receive any further response. He contacted OFMDFM on 1 September 2014 for an update but did not receive a response to this correspondence.

Scope of the case

7. The complainant contacted the Commissioner on 15 September 2014 to complain that he had not received a response to his request.
8. The Commissioner wrote to OFMDFM on 17 September 2014 to request that it respond to the complainant's request. However the complainant did not receive any further response from OFMDFM. Nor did the Commissioner receive a response to his letter.

Reasons for decision

Section 1: general right of access **Section 10(1): time for compliance**

9. Section 1(1)(a) of the 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.

10. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
11. In this case OFMDFM has acknowledged receipt of the request but has provided no substantive response. Despite correspondence from the Commissioner OFMDFM has still failed to confirm or deny that it holds the requested information, and has neither disclosed the requested information nor provided a valid refusal notice.
12. The Commissioner therefore finds OFMDFM in breach of section 1(1)(a), section 1(1)(b) and section 10(1) of the FOIA.

Other matters

13. The Commissioner wishes to record his concern at OFMDFM's failure to communicate with the complainant in this case. The Commissioner recognises that in rare cases public authorities may fail to meet the statutory time for response. However good practice and customer service principles would indicate that the authority should contact the applicant to advise that the response will not be issued in accordance with the time limit set out in the FOIA. The Commissioner remains of the view that public authorities must comply with the FOIA, but in cases where this is not possible it is both courteous and necessary to keep the applicant informed.
14. The Commissioner notes that OFMDFM has in previous cases corresponded with applicants on this basis, and has provided an estimated date when a response may be forthcoming. The Commissioner considers this to be helpful and recommends that OFMDFM ensure that its communication with applicants is maintained in the absence of a substantive response.

Right of appeal

15. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
17. 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

**Gerrard Tracey
Principal Policy Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**