

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 14 October 2024

**Public Authority:** The Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Ministry of Justice (MOJ). By the date of this notice the MOJ had not issued a substantive response to this request.
2. The Commissioner's decision is that the MOJ has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires the MOJ to take the following step to ensure compliance with the legislation.
  - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The MOJ must take this step within 30 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 25 March 2024, the complainant made the following request for information to the MOJ:

"FOIA 2000 applies in Northern Ireland but, following the Good Friday Agreement 1988

North South Ministerial Council (NSMC) was established to develop consultation, co-operation and action within the island of Ireland.

<https://www.northsouthministerialcouncil.org>

This resulted in six all-Ireland implementation bodies which are:

- Waterways Ireland: Management of specific and chiefly recreational inland waterways.
- Food Safety Promotion Board: Food safety awareness.
- Special European Union Programmes Body: Management and oversight of EU programmes and common chapters of the National Development Plan (Republic of Ireland) and the Northern Ireland Structural Funds Plan.
- The North/South Language Body: Promotion of the Irish and Ulster Scots languages through two separate agencies, Foras na Gaeilge (Irish) and Tha Boord o Ulstèr-Scotch (Ulster Scots).
- InterTradeIreland: all-Ireland trade and business development.
- Foyle, Carlingford and Irish Lights Commission: The management and development of Lough Foyle and Carlingford Lough and coastal lights through two separate agencies, The Loughs Agency

The implementation bodies have a Code of Practice issued by the North South Ministerial Council relating to Freedom of Information.

[https://www.northsouthministerialcouncil.org/sites/northsouthministerialcouncil.org/files/publications/foi\\_code\\_of\\_practice\\_0.pdf](https://www.northsouthministerialcouncil.org/sites/northsouthministerialcouncil.org/files/publications/foi_code_of_practice_0.pdf)

Paras 1.2 and 1.3 of the Code state

1.2 In preparing this Code of Practice, the responsible Ministers in Ireland and Northern Ireland have had regard to the Freedom of Information Acts 1997 and 2003 in Ireland and to the Freedom of Information Act 2000 in the United Kingdom and other standards and best practice in the area of access to information.

1.3 This Code is non-statutory and does not override or prejudice provisions contained in statutory rights of access to information or records in Irish, UK, EU or international law nor does it override statutory prohibitions on disclosure in particular the Data Protection Act 1998 and the Environmental Information Regulations 2004 in the UK and legislation governing Access to Information on the Environment and the Data Protection Acts 1988 and 2003 in Ireland.

I have been trying to obtain information from Waterways Ireland, based in Co Fermanagh, Northern Ireland. This has been a struggle and their responses have not complied with the report and I have learnt that these statements are not true.

As you know under FOIA 2000 we have a right to ask the Information Commissioner to review the handling of my requests by Waterways Ireland.

That is not the case. Under the Protocol Code of Practice Waterways Ireland or any other organisation carry out any request for an Internal Review and that is the end of the road. So a significant departure and watering down of statutory rights in the U.K.

My request to you is for any information you hold which discusses the introduction of the Code of Practice and the subsequent reduction in the rights of individuals following an Internal Review that resulted from its introduction.

Were MOJ involved in discussions relating to the Code of Practice

Did MOJ approve the Code of Practice.

What concerns did MOJ raise over the removal of the role of the Information Commissioner.

Any documentation you can release on this issue would be helpful.”

6. On 24 April 2024, the MOJ wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test

considerations in respect of exemption under section 35 (formulation of government policy) of FOIA.

## Reasons for decision

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7. Section 1(1) of FOIA states 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."

8. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".

9. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.

10. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that "it is best practice for an extension to be for no more than a further 20 working days".<sup>1</sup> This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.

11. On 16 September 2024 the Commissioner wrote to the MOJ, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.

12. In this case, the total time taken by the MOJ has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

the public interest within a reasonable time frame, the MOJ has not complied with section 17(3).

13. The MOJ is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

## Right of appeal

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14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. 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.
16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**