

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2024

Public Authority: Department of Justice (Northern Ireland)
Address: Knockview Buildings
Ballymiscaw
Stormont Estate
Belfast
BT4 3SU

Decision (including any steps ordered)

1. The complainant has requested from the Department of Justice (Northern Ireland) ('the DoJ') information about the Public Prosecution Service for Northern Ireland ('the PPSNI'), a separate public body. The DoJ said that it did not hold the information specified in the request.
2. The Commissioner's decision is that, on the balance of probabilities, the DoJ does not hold the requested information.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 18 February 2024, the complainant wrote to the DoJ and requested information in the following terms (her capitalisation):

"1. As the Justice Act (Northern Ireland) 2002 as amended created the specific statutory public office of the 'DIRECTOR OF PUBLIC PROSECUTIONS FOR NORTHERN IRELAND' as a corporation-sole under Section 30A and also created the 'PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND' as a statutory corporation-aggregate under Section 29, THEREFORE you are required to 'confirm or deny'* if there

is another specific statutory public office of "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND" (take notice of the specific wording) that exists and was expressly and specifically created by statutory legislation.

-Please respond by selecting either YES 1A. or NO 1B. as specified below:

1A. YES, "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND" exists as a specific statutory public office and was expressly and specifically, created by statutory legislation. Please go next to 1A(i) and 1A(ii).

OR

1B. NO, "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND" as a specific statutory public office does not exist.

1A(i). If YES, and the specific public statutory office "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND" does exist, please provide the specific statutory legislation that expressly and specifically created the statutory public office "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND", along with the year it was created, the specific section, article and or sub section and the working link to www.legislation.gov.uk for the specific statutory legislation, in order to verify that specific legislation.

1A(ii). If YES, and the specific public statutory office "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND" does exist, please also provide the full name of the current public statutory office holder for "THE DIRECTOR OF THE PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND" and the date that he or she was appointed.

*As a public servant you are aware, that it is your duty "to confirm or deny" in accordance to the Freedom of Information Act 2000 Part I 'Right to Information' Section I."

5. The DoJ responded on 13 March 2024, stating that this was a request for legal advice, rather than for recorded information, and as such it did not fall to be considered under FOIA.
6. The complainant wrote again on 19 March 2024, insisting that it was a valid request for information under FOIA, and referring the DoJ to responses issued by three other public authorities to the same request (each of which had responded that they did not hold the requested information).

7. The DoJ responded on 21 March 2024, saying:

“The PPSNI is independent of the Department of Justice and is a non-Ministerial Department. It is therefore not appropriate for the Department to provide any view on the legislation underpinning the establishment of the PPSNI and the role of Director of Public Prosecutions for Northern Ireland.”
8. The complainant replied on 27 March 2024, insisting that the request was for recorded information held by the DoJ and that it should be responded to under FOIA.
9. Following an internal review, the DoJ wrote to the complainant on 23 April 2024. It said it was satisfied that the request was for “...an interpretation of the legal status of a public body”. Noting that FOIA is concerned with access to recorded information, it said “I have been assured that the Department does not hold this information”.

Scope of the case

10. The complainant contacted the Commissioner on 7 June 2024 to complain about the way her request for information had been handled. She said the DoJ had refused to treat the request as an FOIA request and that it could easily confirm or deny whether it held the information she had asked for.
11. On these specific points, the Commissioner notes that although the DoJ did not agree with the complainant that she was asking for recorded information, it nevertheless carried out an internal review, in accordance with the code of practice issued under section 45 of FOIA. The outcome was that it denied that it held any recorded information falling within the scope of the request.
12. The only outstanding point for the Commissioner to consider is whether the DoJ is correct when it says that it does not hold the requested information.

Reasons for decision

Section 1 – Information held

13. Section 1(1)(a) of FOIA states that anyone making a request for information is entitled to be told whether a public authority holds the requested information. Section 1(1)(b) requires that, if held, the information be communicated to the applicant (subject to certain non-disclosure exemptions).

14. In this case, the DoJ says that it does not hold the information described in the request.
15. Where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner applies the civil standard of 'the balance of probabilities'.
16. This means the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request. In deciding where the balance of probabilities lies, the Commissioner will consider the evidence and arguments of both parties, as well as any other pertinent information.
17. The issue for the Commissioner to consider here is whether the requested information **is** held by the DoJ. It is not whether it **should be** held by the DoJ. On this point, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085), that FOIA:

"...does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
18. The complainant has not offered any evidence which indicates that the DoJ does hold the information she has asked for.
19. The DoJ explained to the Commissioner that it considers the complainant to be asking the DoJ about the legal status of a separate public body and its statutory office holder. It has explained to the Commissioner that it has no business reason for holding information from which it can answer this question, and that it does not do so.
20. The DoJ went on to clarify that while it does deal with the PPSNI and its statutory office holder, the PPSNI is a separate public authority to the DoJ. The DoJ considers the requester is seeking from it a legal interpretation about a separate public authority's existence. It said it does not hold recorded information on this and it has advised the complainant to approach the PPSNI directly with her question.
21. The Commissioner considers that this is a cogent explanation for why the DoJ says it does not hold the requested information. The request asks the DoJ for information on the legal status of a completely separate public authority. In order to answer it under FOIA, it would be necessary for the DoJ to hold detailed information about that public authority's legal status. There is no business reason why the DoJ would already hold that information, and the DoJ has confirmed that it does not hold it.

22. The DoJ says the only way it could respond would be by obtaining legal advice on the particular points raised in the request, which would entail the creation of new information. On a similar point, the complainant has commented that a senior member of DoJ staff should have sufficient knowledge to be able to answer the question.
23. However, FOIA is concerned with recorded information that is already held at the time a request is received. It does not require the creation of new information in order to answer a request and the DoJ is not obliged to take such action.
24. Although each request must be considered on a case-by-case basis, the Commissioner notes that the DoJ's position is in keeping with that of the other public authorities the complainant has submitted requests to, as mentioned in paragraph 6 (ie that they do not hold the information specified in the request).
25. In light of the DoJ's submissions, and the lack of evidence to the contrary provided by the complainant, the Commissioner is satisfied that, on the balance of probabilities, the DoJ does not hold the requested information.

Right of appeal

26. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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