

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 31 March 2016

Public Authority: Department of Finance and Personnel for Northern Ireland

Address: Dundonald House
Upper Newtownards Road
Belfast
BT4 3SB

Decision (including any steps ordered)

1. The complainant has requested information relating to advice obtained by the Department of Finance and Personnel. The Department provided some information but withheld the remainder under sections 21 and 42 of the FOIA. During the Commissioner's investigation the Department identified further information and disclosed some of the withheld information. With regard to the remaining withheld information the Commissioner finds that section 21 is not engaged. The Commissioner finds that section 42 is engaged in respect of some information but not engaged in respect of some information. The Commissioner also finds that the public interest in maintaining the exemption outweighs the public interest in disclosing some, but not all, of the information exempt under section 42.
2. The Commissioner's decision is that the public authority has incorrectly withheld some information under sections 21 and 42 of the FOIA. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information listed in the confidential annex schedule to this decision notice.
3. The public authority must take this step 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 7 January 2010 a BBC Spotlight programme broadcast several allegations about Peter Robinson, the then First Minister of Northern Ireland, and his wife, Iris Robinson. Among other things it was alleged that Peter Robinson breached the Ministerial Code of Conduct.¹
5. Subsequently the Minister for Finance and Personnel obtained advice from Paul Maguire QC, then Senior Crown Counsel, in relation to the allegations made in the Spotlight programme. The advice itself was not published, but on 18 February 2010 the BBC reported that it had been shared with a journalist from another media outlet, who claimed to have seen the advice and quoted it as stating:

*"I'm unable to conclude that the First Minister has breached the ministerial code or the ministerial code of conduct or the pledge of office."*²

6. On 28 November 2014 the Northern Ireland Assembly Committee on Standards and Privileges published a report³ into the allegations made in the BBC Spotlight programme. The Assembly Commissioner for Standards stated in the report that the Minister for Finance and Personnel had declined his request for a copy of the advice to assist in his investigation.
7. On 28 November 2014 the complainant made the following request to the Department:

"Under the Freedom of Information Act, I am requesting a copy of Paul Maguire QC's legal advice about the First Minister, Peter Robinson.

I am also requesting a copy of all documentation held by DFP which relates to that advice, whether produced at the time or subsequently."

8. The Department responded to the complainant on 6 January 2015. The Department confirmed that it did hold information relevant to the request but said that it was exempt under section 42 of the FOIA.
9. The complainant requested an internal review on 11 January 2015, and the Department provided him with the outcome of that review on 2 February 2015. The outcome was that the Department upheld its reliance on section 42 in respect of the advice. The internal review did however find that the Department had failed to address the second part

¹ <http://www.northernireland.gov.uk/index/your-executive/ministerial-code.htm>

² http://news.bbc.co.uk/1/hi/northern_ireland/8522185.stm

³ <http://niassembly.gov.uk/assembly-business/committees/standards-and-privileges/reports/report-on-the-investigation-into-allegations-made-in-the-bbc-spotlight-programme-broadcast-on-7-january-2010/>

of the request, ie information relating to the advice. The reviewer said that he had discussed this issue with departmental officials on 22 January 2015 and that the Department would respond to this part of the request within 20 working days of 22 January 2015.

Scope of the case

10. On 2 February 2015 the complainant contacted the Commissioner. The complainant expressed the view that the withheld information ought to have been disclosed and asked the Commissioner to investigate. The complainant also advised the Commissioner that he had not received a response to the second part of his request as the Department had stated in its letter of 2 February 2015.
11. The complainant subsequently confirmed to the Commissioner that he was content to exclude personal information relating to Iris Robinson. Therefore the Commissioner's decision relates only to that part of the withheld information relating to Peter Robinson. Given that some of the allegations related to both individuals as a married couple the Commissioner has taken into account the extent to which Peter Robinson, rather than Iris Robinson, is the focus of the information in question.
12. The Commissioner wrote to the Department on 17 April 2015. The Commissioner requested a copy of the withheld information, along with further details of the Department's reasoning for relying on section 42 of the FOIA. The Commissioner also asked that the Department respond to the second part of the request.
13. The Commissioner set a deadline for the Department to respond by 18 May 2015. On 22 May 2015 the Department provided the complainant with a response to the second part of the request. The Department disclosed most of the information relevant to this part of the request, but advised the complainant that some information had been withheld under section 21 and section 42 of the FOIA.
14. The Commissioner did not receive a substantive response to his own enquiries, and on 8 June 2015 he issued an information notice. This required the Department to make the withheld information available for inspection and provide further details of the Department's position with regard to the exemptions claimed.
15. The Commissioner inspected the withheld information on 7 July 2015. At this stage it appeared to the Commissioner that further information was likely to be held by the Department that was relevant to the request, but that had not been identified. The Commissioner invited the Department to conduct a further search.

16. On 17 August 2015 the Department advised the Commissioner that it had now identified further information that was relevant to the request. The Department disclosed some of this information to the complainant on 20 August 2015. The Department also disclosed some of the information it had previously sought to withhold under section 42 of the FOIA.
17. In light of the above the Commissioner's decision relates to the Department's application of the exemptions at section 21 and section 42 of the FOIA to the remaining withheld information.

Reasons for decision

Section 21: information reasonably accessible to the applicant

18. Section 21 of the FOIA says that information is exempt from disclosure if it is reasonably accessible to the applicant by other means. Unlike consideration of most other exemptions in the FOIA, this allows the public authority to take the individual circumstances of the applicant into account. In effect, a distinction is made between information that is reasonably accessible to the particular applicant and the information that is available to the general public. Information is only reasonably accessible to the applicant if the public authority:
 - knows that the applicant has already found the information; or
 - is able to provide the applicant with precise directions to the information so that it can be found without difficulty.
19. The Department advised the complainant on 22 May 2015 that it held eight documents that it considered fell within the scope of section 21. However the Department did not offer any explanation or assistance to the complainant as to where or how he might access this information.
20. Five of the eight documents comprise answers to Assembly Questions (AQs). The Commissioner understands that AQs and corresponding answers are generally accessible on the Northern Ireland Assembly website. The Commissioner also understands that the complainant might be assumed to have the necessary prior knowledge to locate this information. However, in the Commissioner's opinion the Department ought to have provided links to the location of the specific AQs on the Assembly website.
21. One further document is listed as:

"Transcript of UTV Live broadcast of 17th February 2010."

22. The Department did not provide any explanation, either to the complainant or the Commissioner, as to how the complainant could obtain a copy of a transcript of a media broadcast. In the absence of any such explanation the Commissioner is not satisfied that this information was reasonably accessible to the complainant.
23. Finally, the Department listed an "*excerpt (1 page)*" of a report published by the Committee on Standards and Privileges. This report is available on the Assembly website, but the Department did not specify which page or pages contain information that falls within the scope of the complainant's request. A public authority wishing to rely on section 21 must make it clear how the applicant can access the specific information he or she requested. The authority cannot expect an applicant to trawl through a document and make their own judgement as to which page might comprise the requested information.
24. In light of the above the Commissioner is not satisfied that the Department is entitled to rely on section 21 in respect of any of the information withheld under this exemption. The Commissioner therefore requires the Department to disclose to the complainant the information it considered fell under section 21 of the FOIA. This information is listed in a confidential annex schedule that has been provided to the Department but not the complainant.

Section 42(1): legal professional privilege

25. Section 42(1) of the FOIA provides that information is exempt from disclosure if it is protected by legal professional privilege (LPP) and the claim to privilege could be maintained in legal proceedings. There are two categories of LPP; advice privilege and litigation privilege.
26. In this case the Department considered the information in question to attract advice privilege. Advice privilege will apply where the following criteria are met:
 - The information is confidential;
 - The communication was between a client and their professional legal adviser acting in their professional capacity; and
 - The information was created for the purposes of obtaining legal advice or assistance in relation to rights and obligations.
27. LPP will only apply where advice is given in a legal context, ie where the lawyer is being consulted on account of his or her legal expertise. The Commissioner's guidance says:

"The legal adviser must have given advice in a legal context... Advice from a lawyer about financial matters or on an operational or strategic issue is unlikely to be privileged, unless it also covers legal concerns, such as advice on legal remedies to a problem."

28. The Department sought to rely on section 42(1) in respect of information redacted from three documents, and in respect of a further 45 documents in their entirety. Having now inspected all the information claimed by the Department to fall under the scope of section 42(1), the Commissioner considers that the information can be categorised as follows:

- i. Internal departmental correspondence preceding the request for advice from Paul Maguire;
- ii. The request for advice and the information provided to Paul Maguire as part of that request;
- iii. The advice provided by Paul Maguire;
- iv. Internal correspondence between the Departmental Solicitor's Office and the departmental press office; and,
- v. Internal departmental correspondence describing the advice.

29. The Commissioner has considered each category of information and has set out his findings below.

i. Internal departmental correspondence preceding the request for advice from Paul Maguire

30. This portion of the withheld information comprises correspondence between the Departmental Solicitor's Office (the DSO) and other departmental officials before advice from Paul Maguire was sought. The DSO is a division of the Department, and provides legal services to the Northern Ireland Executive and ministers and departments. The information falling under this category also includes a request for legal advice made to the then Departmental Solicitor, Oswyn Paulin, and the advice he provided.

31. Having inspected the information the Commissioner is satisfied that the correspondence attracts LPP. This is because the DSO, and the Departmental Solicitor, were acting as legal advisers to the Department and the information in question was created for the purpose of obtaining and providing legal advice.

ii. The request for advice and the information provided to Paul Maguire as part of that request

32. The Commissioner recognises that LPP can attach to information created for the purpose of giving or obtaining legal advice. This may include requests for legal advice as well as the advice itself, since in order to obtain advice the client must set out their position and any concerns they may have.

33. As indicated above LPP will only apply where the legal adviser is asked to give advice in their capacity as a lawyer. In this case the Department

has stated that Paul Maguire was asked to give advice on the allegations made in the Spotlight programme. In response to a written Assembly Question about the request for advice the Minister for Finance and Personnel said:

*"It is not appropriate to provide details of the instructions sent to Counsel other than to state that the advice was sought in relation to the allegation in the Spotlight programme that the First Minister acted in breach of the Ministerial Code, Ministerial Code of Conduct and the Pledge of Office."*⁴

34. The Codes and the Pledge referred to above are non-statutory and the complainant has suggested that advice on matters of compliance ought not to be considered as legal advice for the purposes of section 42.
35. Given that discussion of this point inevitably requires reference to the request for advice, the Commissioner considers it necessary to set out his analysis in a confidential annex that is provided only to the public authority to avoid inadvertent disclosure of sensitive information. For the reasons set out in the confidential annex the Commissioner is prepared to accept that the withheld information falling under this category comprises communications between the Department and its legal adviser for the purpose of seeking advice from a lawyer. The Commissioner thus finds that this portion of the withheld information attracts LPP and section 42 is engaged.
36. In reaching this conclusion the Commissioner has taken into account his finding that the advice provided by DSO to the Department attracts LPP. The Commissioner must be careful not to disclose exempt information but can confirm that he considered each advice separately because the legal advice provided by DSO was in response to a different set of instructions than those provided to Paul Maguire.

iii. The advice provided by Paul Maguire

37. The advice is contained in a confidential communication from the legal adviser, Paul Maguire, to his client, the DSO acting on behalf of the Department. The Commissioner cannot discuss the content of the advice in any detail in this decision notice as the Department considers it exempt from disclosure into the public domain. The Commissioner has therefore set out his detailed analysis in the confidential annex.
38. The complainant has pointed out that the advice was shared with a journalist, and has asked whether this would constitute waiver of LPP. However the Commissioner is of the opinion that waiver is not generally relevant in the context of considering disclosure of information under the

⁴ AQW 4452/10

FOIA. LPP is about protecting the confidentiality of communications between a client and their legal adviser. LPP will only have been lost if there has been a previous disclosure of the information in question to the public at large, and if the information can therefore no longer be described as confidential.

39. The Commissioner asked the Department to clarify whether the advice had been shared with any person outside the Department. The Department provided the Commissioner with a statement, which is reproduced at annex 1 at the end of this notice. The Department stated that the then Minister for Finance and Personnel, Sammy Wilson, took the decision to share the advice with Peter Robinson *"on a confidential basis"*, since it related to his conduct. The Department stated that the Finance Minister was not aware that the advice was to be shown to anyone else, and did not clarify whether Peter Robinson had sought consent from the Department before he shared the advice with a journalist. The Department did however confirm that Peter Robinson had allowed the journalist to see the *advice "under controlled conditions"* but not to keep a copy.
40. The Commissioner has carefully considered the information provided by the Department, and notes that the Department, rather than Peter Robinson, is the client in this case. The Department has stated that it shared the advice with Peter Robinson in confidence, and that Peter Robinson shared the advice with a journalist in a restricted manner. Therefore the question for the Commissioner is whether the Department at this stage had effectively lost control over the information, which would be fatal to a claim of confidentiality and thus LPP.
41. The Commissioner also notes that Peter Robinson quoted an extract of the advice in correspondence with the Assembly Commissioner for Standards during his investigation. The Assembly Commissioner had requested a copy of the advice, but the Department had refused on the basis that LPP applied.
42. The Commissioner considers that in disclosing the advice to Peter Robinson as First Minister, the Department would have a reasonable expectation that confidentiality would be preserved. Although the journalist was apparently able to quote part of the advice, the Commissioner does not consider that confidentiality was lost in respect of the advice as a whole. Only a small part of the advice was disclosed into the public domain via the journalist's report, and the remainder of the advice has not been published. Consequently the Commissioner is of the opinion that the Department's decision to share the advice with Peter Robinson did not equate to a loss of control over the information, therefore confidentiality remained intact. Therefore the Commissioner

finds that the information in question would still attract LPP and the exemption at section 42 is engaged.

iv. Internal correspondence between the DSO and the departmental press office

43. This information includes correspondence predating the provision of the legal advice from Paul Maguire, and correspondence after the legal advice was received. None of the correspondence appears to have been created for the sole or dominant purpose of obtaining legal advice. Rather, the correspondence records discussions about how to deal with media enquiries and requests for information about the advice. There had been some confusion as to whether Paul Maguire had been asked to conduct an investigation or inquiry, and the Department clarified, in response to various media enquiries, that Paul Maguire had in fact been asked to provide his opinion on the allegations made in the Spotlight programme. The Commissioner would stress that he does not consider the Department's response to the media enquiries to constitute loss of confidentiality with regard to the request for advice from Paul Maguire.
44. The Commissioner notes that the Department did disclose some internal correspondence to the complainant on 20 August 2015. However the Department has not explained how it distinguished between the internal correspondence that could be disclosed, and that which the Department considered should remain withheld.
45. Having inspected the withheld information that falls within this category the Commissioner is not satisfied that it attracts LPP. The information comprises internal correspondence discussing how to handle enquiries about the Department's decision to seek advice from a lawyer rather than conduct an investigation into the allegations made in the Spotlight programme. Therefore the Commissioner is of the opinion that the information in question was created for the purpose of communicating the Department's position, rather than for the purpose of seeking or obtaining legal advice. The Commissioner has also included in this section correspondence in which the DSO advised Paul Maguire of its response to media enquiries about the request for advice. Again the Commissioner considers that this correspondence was generated to keep Mr Maguire informed as to the Department's handling of media enquiries, rather than for the purpose of seeking or obtaining legal advice.
46. As the Commissioner does not accept that this portion of the withheld information attracts LPP it follows that the exemption at section 42 is not engaged in respect of this information. Since the Department has not sought to rely on any other exemptions the Commissioner requires that this information be disclosed to the complainant.

v. Internal departmental correspondence discussing the advice

47. As set out above the Commissioner accepts that the advice provided by Paul Maguire attracts LPP. It follows that correspondence which discloses the content of that advice will necessarily also attract LPP. Other information in this category comprises advice regarding the Department's obligations under the FOIA. This is clearly legal advice and will attract LPP. Therefore the Commissioner is satisfied that section 42 will apply to most of the information falling within this category.
48. However, the Commissioner is of the view that some of the information in this category does not in fact disclose any of the content of the actual advice. Rather, it discusses presentational issues regarding the Department's decision making. The Commissioner considers that this information will not attract LPP and therefore cannot be exempt under section 42. The Commissioner again notes that the Department has not sought to rely on any other exemptions. Therefore the Commissioner requires that this information be disclosed to the complainant.

Public interest test

49. The Commissioner has gone on to consider the public interest test with regard to the withheld information that falls under the exemption at section 42 of the FOIA. He has taken account of the Information Tribunal's decision in *Bellamy v Information Commissioner* in which it was stated:

*"...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."*⁵

50. However the Commissioner also notes that in *DBERR v Dermot O'Brien*⁶ the High Court noted that the inbuilt public interest in protecting LPP should not mean that section 42 is, in effect, treated as an absolute exemption. Therefore, although the inbuilt public interest in favour of maintaining the exemption is a weighty factor, the information should nonetheless be disclosed if the public interest in doing so is sufficiently strong.

⁵ Appeal no EA/2005/0023

⁶ www.bailii.org/ew/cases/EWHC/QB/2009/164.html

Public interest arguments in favour of disclosure

51. The Department acknowledged the inherent public interest in ensuring that public authorities are transparent in the decisions they make in order promote accountability and improve the quality of their decision making. The Department accepted that there is a public interest in the public being able to exercise their rights under the FOIA in order to enhance their understanding of the reasons for decisions taken by a Minister or public body.
52. The Department referred to the Commissioner's recognition of the strong public interest in disclosing information which would demonstrate whether public authorities had acted appropriately. This was especially true where the issues had been the subject of considerable public debate and speculation.
53. The Department also recognised that disclosure of the withheld information in this case would help inform the public as to whether there was any incompatibility between the advice provided and the decisions taken, and whether the advice provided was actually followed.
54. The complainant also drew the Commissioner's attention to the subject matter of the advice, ie allegations that Peter Robinson, at the time one of the most senior politicians in Northern Ireland, had acted inappropriately. The complainant pointed out that some of the withheld information was effectively in the public domain via Peter Robinson's disclosure of the advice to a journalist, and his correspondence with the Assembly Commissioner for Standards. The complainant argued that the lack of public transparency created an unacceptable disparity, and since Peter Robinson had been apparently permitted to disclose parts of the advice, that the public should be able to inspect the advice in full.
55. The complainant argued that in other legislatures, decisions on whether ministers had broken the Ministerial code would be published as a matter of course, rather than obtaining confidential legal advice. The complainant was of the strong opinion that there was an overriding public interest in informing the public as to how such allegations were investigated in Northern Ireland.

Public interest arguments in favour of maintaining the exemption

56. The Department said that the courts had consistently recognised the fundamental importance of the principle of LPP, and that the principle of confidentiality in communications between lawyers and their clients was vital. The Department argued that there was a need for "reasonable certainty" relating to confidentiality and the disclosure of legal advice. Without this the principle of confidentiality would be undermined and the quality of legal advice may not be as full and frank as it ought to be.

57. The Department emphasised that government needs to be assured that it is acting in a fully informed legal context. This meant that government departments required high quality, comprehensive legal advice for the effective conduct of their business. Without such comprehensive advice the quality of decision making would be “much reduced” since it would not be fully informed and this would be contrary to the public interest.
58. The Department said it was vital that authorities were able to obtain full and frank legal advice in confidence. Legal advice necessarily highlights the strengths and weaknesses of a particular position, so if legal advice were to be routinely disclosed, public authorities would potentially be in a weakened position compared to other persons not bound by the FOIA.
59. The Department added that the disclosure of legal advice had a significant potential to prejudice the government’s ability to defend its legal interests. This may be directly, by unfairly exposing its legal position to challenge, or indirectly, by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.
60. More specifically, the Department considered that the advice was still “live” in the sense that Peter Robinson was still First Minister at the time of the request. The Department was therefore concerned that disclosure of the withheld information would be potentially unfair to Peter Robinson, and to the wider interests of government.

Balance of the public interest

61. When considering the public interest in relation to the section 42 exemption the Commissioner accepts that there is a strong inherent public interest in maintaining the exemption in order to protect the principle of LPP. He will give due weight to the assumption in favour of disclosure and general public interest in transparency, accountability and the importance of informing the public’s understanding of how decisions are taken.
62. As set out above the Commissioner has found the exemption at section 42 to be engaged in respect of most of the withheld information. He accepts that LPP attracts to this information, and in considering the public interest the Commissioner has attached significant weight to the importance of protecting LPP. The Commissioner is cognisant of the complainant’s argument that the advice could have been sought from a person who was not a lawyer. Public authorities should not be encouraged to request routine advice from lawyers in order to benefit from the protection offered by LPP. However the Commissioner acknowledges that it is reasonable for government to seek advice from

an individual who can bring particular expertise and judgement to the issues in hand. The Commissioner has borne this in mind when balancing the public interest, and is of the view that there is a stronger public interest in informing the public about the Codes and the Pledge, than there would be in disclosing legal advice about compliance with legal requirements or obligations.

63. The Commissioner is disappointed at the generic nature of some of the public interest arguments put forward by the Department. The Commissioner has commented further on this in the confidential annex, since it is again necessary to refer to the content of the withheld information. Where the Department has provided detailed arguments the Commissioner has afforded them appropriate weight.
64. The Commissioner's guidance indicates that additional weight may be added to the public interest in favour of maintaining the exemption if the legal advice is recent or live or protects the interests of the public. Conversely, the public interest in favour of disclosure may be strengthened in the following circumstances:
 - there is a large amount of money involved;
 - a large number of people are affected;
 - there is a lack of transparency in the public authority's actions;
 - there has been misrepresentation of advice that was given; or selective disclosure of only part of advice that was given.
65. The advice in question was sought and obtained in early 2010, so was over four years old at the time of the request. The Department argued that the advice remained live since the First Minister was still in post at the time of the request. However the Commissioner is mindful that the advice related very specifically to the allegations made in the BBC Spotlight programme broadcast in 2010, as opposed to any other issue. In addition the Commissioner is mindful that the advice was obtained at the request of the First Minister, who then relied in part on its conclusions in order to resume his political position. The Commissioner notes that the Assembly Commissioner for Standards did not issue his report on the allegations until November 2014, which precipitated the complainant's request. Therefore the Commissioner does not consider that the advice was still live at the time of the request, and this factor carries limited weight in balancing the public interest.
66. The Commissioner has seen no evidence or arguments to suggest that a significant amount of money was involved. The Commissioner accepts that the post of First Minister is relevant to the people of Northern Ireland as it is one of the most senior political positions within the Northern Ireland Executive. However it is not the case that a large number of people were directly or indirectly affected by the advice,

therefore this factor does not add any significant weight to the arguments in favour of disclosure.

67. Nor has the Commissioner seen any evidence that the advice itself was misrepresented. The Department clarified that Paul Maguire was not asked to conduct an inquiry or establish any facts, he was asked to provide his own view in respect of information provided to him. Although the Assembly Commissioner for Standards was not permitted access to the advice when conducting his investigation, despite the fact that Peter Robinson quoted part of it in support of his position, the Commissioner does not believe that the advice received was presented in an unduly selective manner. The Assembly Commissioner's investigation was conducted following a request from the Committee on Standards and Privileges, whereas Paul Maguire's advice was sought following a request from Peter Robinson himself. The DUP was also quoted in media reports as saying that Peter Robinson was very keen for the advice to be published "in as transparent and complete a form as possible"⁷, although he was also quoted as recognising that there were a number of "legal impediments" to doing so.
68. Notwithstanding the above the Commissioner is of the view that disclosure of the withheld information in this case would enhance the public's understanding of how the Department, and Peter Robinson as First Minister, responded to the allegations contained in the BBC programme. The Commissioner notes that Peter Robinson temporarily stepped down as First Minister and stated that he would resign if he was found to have committed any wrongdoing. There is therefore a legitimate public interest in the public being informed as to the specific issues and information Paul Maguire was asked to consider, especially as the Department clarified that Paul Maguire was asked to provide advice on the basis of the information provided to him, as opposed to being tasked with conducting an investigation or fact finding exercise. In the absence of such an investigation, disclosure of the withheld information would more fully inform the public as to how Peter Robinson concluded that the advice supported his decision to resume the post of First Minister. The Commissioner has attached significant weight to this argument.
69. In conclusion, the Commissioner has had due regard for the principle of LPP, and the importance of protecting the ability of government to obtain high quality legal advice. The Commissioner has balanced this with the substantial public interest in informing the public as to how allegations involving the First Minister were considered, especially given the nature of the advice requested and the content of the advice provided. Taking all of these factors into account the Commissioner has

⁷ http://news.bbc.co.uk/1/hi/northern_ireland/8497072.stm

determined, on the particular circumstances of this case, that the public interest in maintaining the exemption outweighs the considerable public interest in disclosure of some, though not all, of the withheld information in this case. That information where the public interest does not outweigh the public interest in disclosure is identified in the confidential annex schedule.

Procedural requirements

Section 1(1)(b): duty to provide information and Section 10(1): time for compliance

70. Section 1(1)(b) of the FOIA requires a public authority to provide information to an applicant in response to a request. Section 10 of the FOIA states that a public authority must comply with section 1(1) promptly, and in any event not later than twenty working days after the request has been received.
71. The complainant made his request on 28 November 2014, and received some of the requested information on 6 January 2015. The Department disclosed further information in May and August 2015, following the Commissioner's intervention. It follows that the Department breached section 1(1)(b) and section 10(1) of the FOIA.

Right of appeal

72. 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 123 4504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

73. 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.
74. 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 Adviser
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**

Annex 1

Statement from the Minister of Finance and Personnel:

"I have spoken to the First Minister and former Finance Minister Sammy Wilson in relation to the disclosure of the advice that was received from Senior Crown Counsel.

Mr Wilson felt it appropriate to share the advice with the First Minister on a confidential basis given the nature of its contents. He was not aware that the advice was to be shown to anyone else.

The First Minister, while respecting the convention that legal advice is not published, wished an independent person to be able to verify the conclusions of the advice were as he had claimed.

He therefore allowed the journalist Ken Reid to see the advice under controlled conditions to verify the accuracy of the claims but not to keep a copy or to make any other use of the document".