

Mr. H. McCloy

Email: request-28229-d0f63374@whatdotheyknow.com

Information Management Unit
Rosepark Annexe
711-715 Upper Newtownards Road
BELFAST
BT4 3NR

Tel: 02890 526747
John.morgan@dfpni.gov.uk

5 May 2010

Dear Mr. McCloy,

DFP/IR/2010-0001 and 0002 – Reviews of FOI Nos. 20615 and 21684

Thank you for your email of 12th April 2010 requesting reviews of the Department's delay in providing the information you requested in both the above referenced cases. As you know from Emma Davidson's letters of 15th April 2010 the Department asked Norman Taylor to carry out the reviews and I am now writing to let you know the results.

Mr Taylor has reported by way of the attached minute to me which deals with both cases. You will see that he has concluded that the Department has fallen well short of the standards that you could reasonably expect in dealing with these requests, although he does acknowledge that there were particular extenuating circumstances that partly explain, but do not excuse, the delay. The Department has a good track record of providing timely responses to FOI requests but, on this occasion, it is clear that we have not maintained that record. On behalf of the Department I apologise for the delay and I will be instigating steps to try to ensure that such delays are not repeated.

Mr. Taylor has also found that the Department should provide so much of the requested information as it considers discloseable within seven working days of the date of his report and I can give that commitment.

I hope that you agree that the Department has dealt properly with your requests for reviews but, if not, you do, of course, have the right to appeal to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

PP E. Davidson

J. Morgan

To: Mr J. Morgan, DFP

5th May 2010

From: Norman Taylor

DFP/IR/2010-0001&0002 – Reviews of FOIs NOs. 21615&21684

1. As requested on 14th April 2010 I have reviewed the delays by the Department in providing the information requested by Mr McCloy in FOI requests Nos. 21615 and 21684.
2. My reviews have revealed that the information requested has now been compiled and redacted for various exemptions within the Act but it has not yet been supplied to Mr. McCloy. At present the various public interest tests are being completed and I know that Mr McCloy has requested that the information be provided in electronic form. This will necessitate scanning all the documents because the redactions have been made by “blacking out” the relevant parts on paper copies. Had the Department not failed to supply the discloseable information in a reasonable time I would have been of the opinion that it was reasonable to charge Mr. McCloy for the allowable costs incurred as per Regulation 6 of the FOI and DP (Appropriate Limit and Fees) Regulations 2004. However because of the delays in these cases I could not support any move to charge such fees.
3. As the information requested has not yet been supplied I am solely reviewing the failure to provide the information requested in due time. If, when he is provided with the information, Mr McCloy is dissatisfied with the decisions taken on the discloseability or otherwise of various parts, reviews of those decisions could be requested.
4. I find that the Department has failed to fulfil its statutory duty to provide Mr. McCloy with the information requested in due time. While I understand that there are reasons for the delay concerning the volume of the material that had to be gone through to check its discloseability, unforeseeable serious illness in the

immediate family of an official who was dealing with the case and by a bereavement in another's family, the Department should have procedures in place to ensure that such events as the last two do not lead to such a failure.

5. Moreover, when it was clear that the Department was going to need more time, Mr. McCloy should have been issued with a refusal notice stating the reason for the delay, the exemptions that were being considered and when the Department expected to be able to provide the discloseable information, rather than the letter he did receive which failed to provide the necessary clarity and which gave a timescale which was not met. Neither has the time stated in a subsequent letter been met.
6. On the other hand I recognise that, trying to be helpful and realising that the only address that they had for Mr McCloy was an email one, late in the day officials asked Mr. McCloy whether he wanted hard copies or electronic ones. His selection of electronic copies has further added to the work involved and resulted in more delay. I find that, as he had not specified the form in which he wished to receive the information, the Department did not have to give Mr. McCloy such an option and that the public interest would have been better served by simply providing hard copies to be collected by him or delivered to an address which he provided.
7. All in all I am satisfied that the Department has signally failed to meet its obligations under the FOIA in these cases. I must, however, also record that my experience is that such a performance is very atypical as the Department does take such duties very seriously. I recommend that the Department investigates thoroughly all the factors that led to delay in these cases and takes steps to ensure that there is no repetition. In the meantime the Department should ensure that Mr McCloy is provided with the redacted information, together with the reasons for the redactions, no later than seven working days from the date of this determination.

Norman Taylor
FOI Reviewer