



Department of  
**Justice**  
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## Freedom of Information Team

6<sup>th</sup> September 2018

**REFERENCE: FOI18\115**

Dear Sir,

I wish to confirm that the Department has now completed its search for the information you requested on 9 August 2018.

You asked the Department:

*"In a recent landmark judgement over a Mallusk Incinerator, the Court of Appeal ruled that "any decision which as a matter of convention or otherwise would normally go before the minister for approval lies beyond the competence of a senior civil servant in the absence of a minister."*

*It further stated that "cross cutting" decisions involving more than one department were beyond the remit of civil servants.*

*In light of this, I would like to know*

*1) How many outstanding decisions or "cross-cutting" decisions does your department have that require ministerial approval?*

*2) Where possible, can you further specify the precise details of any such decisions and what they are regarding."*

I wish to advise you that some of the information you requested is being withheld. The department considers this information relates to the formulation of government policy. In applying the exemption under Section 35(1)(a), the department has considered the public interest test in withholding the information against the public

interest in disclosing. Examples of outstanding decisions are contained in Annex A. The factors considered when deciding where the public interest lies are explained in Annex B.

If you are unhappy at the way in which your request has been handled you may make a complaint to the Information Commissioner and ask him to investigate whether the DOJ has complied with the terms of the FOIA. You can write to the Information Commissioner at:

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Further details on the role of the Information Commissioner can be found at:  
[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

Yours sincerely,

**Freedom of Information Manager**

## Annex A

<b>Departmental Business Description</b>
Access to Justice Directorate
Judicial Pensions
Personal Injury Discount rate
Criminal Finances Act 2017
Rehabilitation of Offenders
Legacy Inquest Funding
Introduction of Statutory Registration Scheme for all suppliers of Legal Aid services
Reform of legal aid remuneration for Court of Appeal (Criminal) Cases
Reform of Civil Legal Aid Remuneration
Review of the Use of Contracting for Legal Aid
Police Officer Pay Award for 2018/19
Executive Action Plan for Tackling Paramilitary Activity, Criminality and Organised Crime
Domestic Violence
Committal Reform
Gallagher: potential change to legislation
Change in the Statutory Discount Rate
Amendments to Judicial Pensions regulations
TOFO to transfer legal responsibility for The Appeals Service from DfC to DoJ
Publication of next steps paper on Tribunal Reform
Brexit no-deal legislation

## **Subordinate Legislation**

There is a wide range of subordinate legislation across DoJ which cannot be made in the absence of fully functioning Assembly.

## **Public Appointments**

Northern Ireland Law Commission (NILC)

NI Policing Board

NI Police Fund

RUC GC Foundation

Police Rehabilitation and Retraining Trust

Prisoner Ombudsman

Judicial Parole Commissioner

Legal Aid Appeals Panel

<b><u>Section 35</u> - Formulation of government policy</b>	
<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"><li>• Disclosure would provide greater transparency and accountability.</li><li>• There is also a public interest in being able to participate in the decision-making process, and to make a more effective contribution to it.</li></ul>	<ul style="list-style-type: none"><li>• Although some areas of work are currently awaiting ministerial approval, this does not mean that the policy formulation process has been completed. Documents prepared for Ministerial approval are subject to change, as Ministers may wish to make revisions. Therefore, no piece of work (or document) can be considered completed until Ministers have had a chance to fully consider it and, potentially, make changes to it prior to approval.</li><li>• The release of some information would be likely to mislead the views of external stakeholders, in advance of decisions regarding budgets and priorities being fully considered by Ministers. This would not be in the public interest.</li><li>• Frank and honest debate is a key component of high quality policy formulation and there is a public interest, in appropriate situations, in maintaining a private space for discussion away from public scrutiny to effectively formulate and develop policy. Officials need to be able to discuss difficult policy issues with candour, and the release of certain details would inhibit that and would result in poorer decisions. The issues being considered are still at the policy development stage and, as this is the case, the release of certain information would impact negatively on future discussions.</li></ul>



### Reasons why public interest favours withholding information

While disclosure of this information may better inform the public about ongoing policy developments, there is a significant risk that the release of certain information would impact negatively on future discussions. Incoming Ministers would require the opportunity to consider issues afresh, and to release certain information at this point would undermine that exercise. Moreover, premature disclosure would be likely to mislead the public by giving the impression that any work awaiting approval would, as a matter of course, receive it.

It is therefore the view of the Department, having considered all the circumstances of the case, that it is not in the public interest to disclose all of the requested information.

