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FROM: J MCKEOWN

CC SECRETARY
GRADE 3s
GRADE 4s
G MARTIN

11 March 1994

TO: HEADS OF DIVISIONS

OPEN GOVERNMENT: CODE OF PRACTICE ON GOVERNMENT INFORMATION

INTRODUCTION

1. I attach for the information of you and your staff a copy of the Code of Practice on Open Government for the Department of Finance and Personnel which is to come into operation on 4 April 1994. The Code also applies to the Valuation and Lands Agency.
2. The Code is being introduced to meet the commitment given by the Government in the White Paper on Open Government published in July 1993. The intention underlying the introduction of the Code is to signal greater openness in government. At the same time, protection is maintained for matters which ought to remain confidential by the identification of exemptions from the commitment to release information.
3. The Department already provides information on an informal basis to the general public. This should continue and existing channels of information between the Department and its customers should not be disrupted. Requests for information should not be treated automatically as being under the Code even though it may be referred to in the request. Only in cases where the Department would not at present normally release the information should the formal procedures associated with the Code be used.

IMPLEMENTATION OF THE CODE

4. MISB will act as the Open Government Contact Point. Information requests under the Code will be channelled to Divisions through MISB. Requests for information made direct to Divisions which can only be supplied by invoking the Code, should be copied to MISB together with the final reply. Paragraph 11 of the Code sets out the procedure for complaints including the right of the applicant to take the matter up with the Ombudsman.

CHARGING

5. Paragraph 7 of the Code refers to a charge for information which involves a significant amount of additional work. It has been decided that information provided under the Code should only attract a charge if it is estimated that more than 5 hours additional work will be

required to provide the information. The applicant should be informed of any proposed charge before any work commences. The Staff Officer Accountant in MISB (Mr R McBride) will be available to help determine the charge. This procedure will be reviewed in six months in the light of experience.

MONITORING

6. The Chancellor of the Duchy of Lancaster proposes to make annual reports to Parliament on the operation of the Code of Practice on Government Information. These will cover calendar years with the first report covering the period from 4 April 1994 to 31 December 1994. It is important therefore that copies of all correspondence under Open Government are passed to MISB in order that returns can be compiled.

ENQUIRIES

7. Any enquiries regarding this minute or the Code of Practice should be addressed to George Martin in MISB, Rosepark House x26409.

J McKeown

OPEN GOVERNMENT

CODE OF PRACTICE ON INFORMATION HELD BY THE DEPARTMENT OF FINANCE AND PERSONNEL AND ITS AGENCIES

PURPOSE

1. This Code of Practice for the Department of Finance and Personnel (referred to throughout the Code as 'the Department'), its agencies and public bodies (see para 3 below) supports the Government's policy under the Citizen's Charter of extending access to official information, and responding to reasonable requests for information except where disclosure would not be in the public interest, as specified in Annex 1 to this Code.
2. The aims of the Code are:
 - to improve policy-making and the democratic process by extending access to the facts and analyses which provide the basis for the consideration of proposed policy;
 - to protect the interests of individuals and companies by ensuring that reasons are given for administrative decisions, except where there is statutory authority or established convention to the contrary; and
 - to support and extend the principles of public service established under the Citizen's Charter.

These aims are balanced by the need:

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and
- to preserve confidentiality only where disclosure would not be in the public interest or would breach personal privacy or the confidences of a third party, in accordance with statutory requirements and Annex 1 to this Code.

INFORMATION THE DEPARTMENT WILL RELEASE

3. Subject to the exemptions in Annex 1, the Code commits the Department, its agencies and its sponsored public bodies listed at Annex 2 which are under the jurisdiction of the Northern Ireland Parliamentary Commissioner for Administration and the Northern Ireland Commissioner for Complaints:
 - (i) to publish the facts and an analysis of the facts which the Department considers relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies and decisions are announced;
 - (ii) to make available, as soon as practicable after the Code becomes operational, explanatory material on the Department's dealings with the public (including such rules, procedures, internal guidance to officials and similar administrative manuals as will assist better

understanding of departmental action in dealing with the public) except where publication could prejudice any matter which should properly be kept confidential under Annex 1 of this Code;

(iii) to give reasons for administrative decisions to those affected;

(iv) to publish in accordance with the Citizen's Charter:

- full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available;

- full and where possible comparable information about what services are being provided, what targets are set, what standards of service are expected and the results achieved.

(v) to release, in response to specific requests, information relating to policies, actions and other matters related to areas of responsibility.

4. There should be no presumption that pre-existing documents, as distinct from information, will be made available in response to requests. This Code does not require the Department to acquire information it does not possess, to provide information which is already published, to provide material which the Department does not consider to be reliable information, or to provide information which is provided as part of an existing charged service other than through that service.

RESPONSES TO REQUESTS FOR INFORMATION

5. Information will be provided as soon as practicable. The target for responses to all simple requests for information is 20 working days from the date of receipt, but this may be extended when significant search or collation of material is required. When the latter occurs a letter of explanation will be issued within the 20 working days. Where information cannot be provided under the terms of the Code, an explanation will normally be given.

SCOPE

6. The Code applies to the Department, its agencies and its sponsored bodies within the jurisdiction of the Northern Ireland Parliamentary Commissioner for Administration (as listed in the Parliamentary Commissioner for Administration (Northern Ireland) Act 1969). Such agencies and bodies are listed in Annex 2. The Code also applies to functions carried out on behalf of the Department, its agencies and its sponsored bodies by contractors.

CHARGES

7. Where a request for information involves significant additional work for the Department, a charge, reflecting all reasonable costs, may be notified to the applicant and is payable before such work is undertaken.

RELATIONSHIP TO STATUTORY ACCESS RIGHTS

8. The White Paper on Open Government proposed two new statutory rights to information:

- an access right to personal records; and
- an access right to health and safety information.

With regards to personal information there are already access rights to personal data held on computer under the Data Protection Act. However the Government proposes to introduce a new statutory right of access by the individual to personal records. Where a statutory right is proposed but not yet implemented access to the relevant information may be sought under the Code, but the Code should not be regarded as a means of access to original documents or personal files.

PUBLIC RECORDS

9. The Code is not intended to override statutory provisions on access to public records, whether over or under thirty years old.

JURISDICTION OF COURTS, TRIBUNALS OR INQUIRIES

10. The Code only applies to Department-held information. It does not apply to or affect information held by courts, tribunals, inquiries or the Northern Ireland Enforcement of Judgements Office. The Code does not replace procedural rules covering disclosure of information before courts, tribunals and inquiries.

INVESTIGATION OF COMPLAINTS

11. Should an applicant be dissatisfied with any response received to a request for information or to a proposed charge, he or she should, in the first instance, inform the sender of the response, in writing, of the nature of the dissatisfaction. If the matter still cannot be resolved the applicant may wish to write to the Permanent Secretary of the Department at Rosepark House, Upper Newtownards Road, Belfast BT4 3NR. The Permanent Secretary will appoint an independent official to investigate the complaint and respond to the applicant as expeditiously as possible. If the applicant is still not satisfied he or she can take their case through a Member of Parliament to the Northern Ireland Parliamentary Commissioner for Administration, if it relates to the Department or its agencies, or direct to the Northern Ireland Commissioner for Complaints if it relates to a sponsored body.

REASONS FOR CONFIDENTIALITY

The following categories of information are exempt from the commitments to provide information in this Code.

References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such cases it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available.

The exemptions will not be interpreted in a way which causes injustice to individuals.

1. Defence, security and international relations

- (a) Information whose disclosure would harm national security or defence.
- (b) Information whose disclosure would harm the conduct of international relations or affairs.
- (c) Information received in confidence from foreign governments, foreign courts or international organisations.

2. Internal discussion and advice

Information whose disclosure would harm the frankness and candour of internal discussion, including:

proceedings of Cabinet and Cabinet committees;

internal opinion, advice, recommendation, consultation and deliberation;

projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;

confidential communications between departments, public bodies and regulatory bodies.

3. Communications with the Royal Household

Information relating to confidential communications between Ministers and Her Majesty the Queen or other Members of the Royal Household, or relating to confidential proceedings of the Privy Council.

4. Law Enforcement and Legal Proceedings

- (a) Information whose disclosure would prejudice the administration of justice, including fair trial and the enforcement of proper administration of the law.
- (b) Information whose disclosure would prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is, has been or is likely to be addressed in the context of such proceedings.

- (c) Information relating to proceedings which have been completed or terminated or relating to investigations which have or might have resulted in proceedings.
- (d) Information covered by legal professional privilege.
- (e) Information whose disclosure would prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any building or penal institution.
- (f) Information whose disclosure would harm public safety or public order.
- (g) Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.
- (h) Information whose disclosure would increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

5. Immigration and Nationality

Information relating to immigration, nationality, consular and entry clearance cases.

6. Effective management of the economy and collection of tax

- (a) Information whose disclosure would harm the ability of the Government to manage the economy, prejudice the conduct of official market operations, or could lead to improper gain or advantage.
- (b) Information whose disclosure would prejudice the assessment or collection of tax, duties or National Insurance contributions, or assist tax avoidance or evasion.

7. Effective management and operations of the public service

- (a) Information whose disclosure could lead to improper gain or advantage or would prejudice:
 - the competitive position of a department or other public body or authority;
 - negotiations or the effective conduct of personnel management, or commercial or contractual activities;
 - the awarding of discretionary grants.
- (b) Information whose disclosure would harm the proper and efficient conduct of the operations of a department or other public body or authority, including NHS organisations, or of any regulatory body.

8. Public employment, public appointments and honours

- (a) Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.

(b) Information, opinions and assessments given in confidence in relation to public employment and public appointments made by Ministers of the Crown, by the Crown on the advice of Ministers or by statutory office holders.

(c) Information, opinions and assessments given in relation to recommendations for honours.

9. **Voluminous or vexatious requests**

Requests for information which are vexatious or manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.

10. **Publication and prematurity in relation to publication**

Information which is or will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.

11. **Research, statistics and analysis**

(a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority or publication or commercial value.

(b) Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety), and which relates to individuals, companies or products which will not be identified in reports of that research or surveillance, or in published statistics.

12. **Privacy of an individual**

Unwarranted disclosure to a third party of personal information about any person (including a deceased person) or any other disclosure which would constitute or could facilitate an unwarranted evasion of privacy.

13. **Third party's commercial confidence**

Information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.

14. **Information given in confidence**

(a) Information held in consequence of having been supplied in confidence by a person who:

- gave the information under a statutory guarantee that its confidentiality would be protected; or
- was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.

(b) Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.

- (c) Medical information provided in confidence if disclosure to the subject would harm their physical or mental health, or should only be made by a medical practitioner.

15. **Statutory and other restrictions**

- (a) Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.
- (b) Information whose release would constitute a breach of Parliamentary Privilege.

The Department's Agencies are:

The Valuation and Lands Agency

The Department's Public Bodies under the jurisdiction of the NI Commissioner for Complaints are:

Nil

Bodies under the Jurisdiction of the NI Parliamentary Commission for Administration are:

Northern Ireland Civil Service Commission