

21 January 2009

Dear

### **FOI Requests – lists of substitutes**

Your email of 14 January appealing the decision made the previous day not to disclose to you “the list of substitutes provided by each of the current MLAs (prior to their election in March 2007) to replace them if they leave office” has been passed to me. As Chief Electoral Officer I am responsible for determining your appeal

Determination of your appeal is likely to take a considerable time – perhaps many months. That is because, if you insist in it, it will be necessary for me to seek the written consent of the potentially more than 600 substitutes as well as of all the MLAs to disclosure of the personal data set out in or implied by the contents of the lists. As you will understand that will be use a significant amount of the limited resources available to me. Almost inevitably some of those whom I need to contact will not respond and others may decline their consent. I will then have to consider whether or not I can properly disclose their personal details to you. Where the individuals give their consent to disclosure there is, of course, no issue.

Where consent is, for whatever reason, not obtained I would also have to consider the Section 38 (Health and Safety) issue. In doing so it would be necessary for me to obtain advice from the PSNI, and perhaps from other agencies, on whether there would be any significant risk to the personal safety of these individuals or those living with them if their names and addresses were put in the public domain. In my experience of these matters obtaining such advice, particularly in relation to such a large number of individuals, can be a very protracted matter.

You may not be aware that the law in relation to filling vacancies in the Assembly is likely to change within the next month. Legislation which has already been approved by the House of Commons, and which is scheduled to be considered by the Lords in early



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February, will abolish lists of subscribers in their present form. If this legislation is approved by the Lords then a vacancy in the Assembly caused by the death, resignation or disqualification of an MLA who represents a political party will be filled by a person named by the nominating officer of that party. All current MLAs represent a political party. If at some time in the future there are independent MLAs the law will provide that, after they have been elected, they may provide me with a list of persons who have agreed to act as their substitute in the event that their seat falls vacant.

If the legislation passes there is, accordingly, no prospect of anyone on any of the current lists of substitutes becoming an MLA without standing at the next Assembly elections which are not scheduled until 2011. In these circumstances you may feel that the public interest argument that you advanced is somewhat weakened.

In all these circumstances I would ask you to consider whether you wish me to continue with your appeal. I look forward to hearing from you.

Yours faithfully,

Douglas Bain CBE TD Advocate  
Chief Electoral Officer for Northern Ireland



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