

Freedom of Information Podcast

Episode 7 – May/June 2007

Ladies and gentlemen welcome to episode 7 of the UK's first Freedom of Information podcast.

I'm Ibrahim Hasan. In May and June the Commissioner published fifty seven FOI decisions whilst the Information Tribunal published six. I'm here to guide you through the some of these.

Amongst other things, in this episode we will be examining decisions about disclosure of information on:

- Empty properties
- Job evaluation criteria
- A council's vehicle towing policy
- A hospital's audit report
- The retirement packages of senior officers
- AND details of premium bond winners

We also have comment and analysis from Andrew Maughan, of the London Borough of Bexley, who recently represented his council in an appeal to the Information Tribunal.

Format of Request

Section 11 FOI allows the applicant to express a preference as to the way he wants information to be communicated. This was examined in the case of:

Case Ref: FS50094281 Date: 17/05/2007

Public Authority: Bath and North East Somerset Council

Although the Council disclosed the information it held, the complainant remained dissatisfied with how it had been presented. He requested the Council to resend the information but in a different format. The Council concluded that it would simply be resending the same information to that already provided. The Commissioner agreed.

He ruled that section 11 of the Act could not be applied in this case, as the complainant made no specific request to receive the information in a particular format at the time of making his initial request to the Council. The Commissioner also stressed that section 11 relates to the means by which information is communicated to the applicant (e.g. by letter or e mail) as opposed to the actual format in which the information is presented.

[View PDF of Decision Notice FS50094281](#)

This decision will assist those public authorities to refuse requests where the applicant wants information in a particular format e.g. a graph or excel spreadsheet.

Section 31

Empty Properties: In July 2006, the Commissioner ruled that Bexley Council had to disclose the details of all empty properties in its area, together with the reasons why the properties are empty, and who owns them. The Council had relied on the exemption in section 31 of the Act; that its release would prejudice the prevention of crime. It argued that release of the information would attract those wishing to commit acts of burglary, squatting and vandalism. The Commissioner was not convinced that this would be a direct consequence of disclosure and, in any event, the public interest lay in disclosure. [View PDF of Decision Notice FS50072190](#).

This decision caused great concern amongst local authorities who believed that their empty properties would be at risk and the details would end up on websites which encouraged squatting.

On the 10th May, the Information Tribunal heard Bexley Council's appeal from this decision :

[Mr C P England and London Borough of Bexley v Information Commissioner](#) (10 May 2007)

The Tribunal ruled that those properties owned by anyone other than individuals should be disclosed together with details of ownership. Whilst it accepted, contrary to the Commissioner's view, that section 31 was engaged it ruled that the public interest in disclosure was greater. However details of properties owned by individuals should not be disclosed as it was personal

data and so exempt under section 40. Disclosure of this information would be unfair to the individuals as their properties may be targeted by criminals and squatters. The Tribunal also made observations about whether information could be said to be reasonably accessible under section 21 just because it may be registered at the Land Registry.

With me to discuss this decision is Andrew Maughan, Assistant Director (Legal Services) at the London Borough of Bexley. Andrew represented the council at the hearing. [Andrew, thank you for joining us:

1. Why you felt you had to challenge the ICO decision?
2. What are key learning points?
3. I notice that you did not argue that council tax data could not be used for another purpose?
4. What view did the Tribunal take about section 21 and registered land?
5. As a lawyer, what was your experience of presenting the case before the IT. Any tips for anyone else going before the IT?]

Parking Enforcement: On 1st June, the Information Tribunal ruled that the London Borough of Hammersmith and Fulham should disclose its policy relating to the towing of vehicles under parking regulations.

[Ms P Reith v Information Commissioner and London Borough of Hammersmith and Fulham](#)

The Council disclosed some information about its towing priorities but indicated that there was more detailed information that it did not wish to disclose. It relied on the section 31 exemption as it felt that disclosure “would be likely to encourage unlawful parking in areas of low priority”.

The Commissioner agreed with this approach but the Tribunal decided that enough evidence had not been adduced to show that the public functions of the public authority would be prejudiced if information was disclosed. The burden was on the council to show a causal link between the disclosure and the prejudice which must be “real, actual or of substance.” The chance of

prejudice occurring must be real and significant which had not been made out in this case. In any event it was in the public interest to disclose the information.

Section 36

Section 36(2) (b), provides an exemption when, in the reasonable opinion of the qualified person, disclosure would, or would be likely to, inhibit:

- the free and frank provision of advice, or
- the free and frank exchange of views for the purposes of deliberation.

This exemption was examined by the Commissioner in a decision involving:

Case Ref: FS50109031

Date: 14/06/2007

Public Authority: South Warwickshire NHS Trust

Summary: The complainant requested an audit report of the Trust's finances for 2004-2005. The Trust refused to provide this information and cited the exemption at section 36(2)(b).

It explained that,

“...it is extremely important to ensure that everyone called upon to be involved in an audit must not be inhibited from providing their advice and / or exchanging views in a free and frank manner. If people are unable to be confident that the information they provide will [...] be kept confidential and be confined to the investigation this would be likely to inhibit them.”

The Commissioner felt that this was a reasonable view of the qualified person but decided that in all the circumstances of the case, the public interest in maintaining the exemption did not outweigh the public interest in disclosing it. [View PDF of Decision Notice FS50109031](#)

In doing so the Commissioner followed the approach taken by the Information Tribunal in *Guardian Newspapers Limited and Heather Brooke vs. Information Commissioner and the BBC*

(Appeal Numbers: EA/2006/0011 and EA/2006/0013) which gave guidance on the application of section 36 and the public interest test.

The Commissioner stated that there is a substantial public interest in the public understanding of issues surrounding the funding of the NHS, especially given the impact this has on such issues as hospital beds, staffing levels and patient waiting lists.

Section 40 - Personal Data

MP's Expenses: It is now accepted that information about expenses claimed by public sector employees and public officials will have to be disclosed. There have been a number of decisions requiring disclosure of MP's expenses including one by the Information Tribunal. Clearly the public have a right to know how MP's spend public money. However recent rulings by the Commissioner have examined the link between the disclosure of information about the spending of public money and the impact on the private lives of MP's.

Case Ref: FS50070469

Date: 13/06/2007

Public Authority: House of Commons

[View PDF of Decision Notice FS50070469](#)

Case Ref: FS50071451

Date: 13/06/2007

Public Authority: House of Commons

[View PDF of Decision Notice FS50071451](#)

In three decisions dated 13th June 2007 involving the House of Commons, Information Commissioner ruled that the total amounts claimed by some individual MPs under the additional cost allowance – the regime for MPs to reclaim expenses for running one home close to Westminster and one in their constituency - should be released under specific headings. These include: mortgage costs; hotel expenses; service charges; utilities; furnishings; maintenance & service agreements.

However the Commissioner ruled that it is not necessary to disclose the full itemised details of expenditure on the running of an MP's private household. To do so would invade the privacy of MPs and their families.

Retirement Information: The Information Commissioner recently upheld the decisions by two local authorities to withhold information about the retirement packages of senior officers.

Case Ref: FS50074995

Date: 16/05/2007

Public Authority: Calderdale Council

[View PDF of Decision Notice FS50074995](#)

Case Ref: FS50123921

Date: 15/05/2007

Public Authority: City of York Council

[View PDF of Decision Notice FS50123921](#)

Calderdale Council and City of York Council both received separate requests under the Act for details relating to the retirement packages of former directors. Both councils refused to disclose the information, stating that the information constituted personal data so was exempt under section 40. The Information Commissioner agreed that the disclosure of personal data would, in both cases, be unfair.

In both cases the Commissioner took account of the seniority of the persons involved but ruled that they still had a right to privacy. To me this does not sit squarely with other decisions including one involving Corby Council where the Commissioner ruled that the salary details of a former temporary finance officer should be disclosed. He gave weight to the seniority of the individual together with the fact that he was in charge of spending public money. One has to ask what is the difference between disclosure of salaries of senior officers and their retirement packages? Both are essentially to do with remuneration and the spending of public money. Surely in both of the recent cases the former directors were sufficiently senior and also made decisions involving the spending of public resources. The public have a right to know not just what they are paid during employment but also upon retirement.

[Although the York case did involve the presence of a compromise agreement with a confidentiality clause (often relied upon by ICO as evidence of an expectation of confidence), no such agreement was present in the Calderdale case.]

A similar approach was taken in the case of:

Case Ref: FS50104995

Date: 07/06/2007

Public Authority: George Eliot Hospital Trust

The complainant requested information about the circumstances surrounding the departure of a previous Chief Executive. [View PDF of Decision Notice FS50104995](#)

I suspect that we will see a challenge to the Commissioners approach in such cases before long. If you are interested in access to personal data under FOI, there are a number of articles on this topic on my website.

Section 43 and Job Evaluation

Many local authorities have been or are currently going through the Single Status and job evaluation program. In such cases some employees inevitably feel aggrieved at subsequent decisions taken about their role and revised salary. Some are turning to FOI to obtain more details:

Case Ref: FS50078603

Date: 05/06/2007

Public Authority: London Borough of Southwark

Summary: The complainant asked the Council for information about the criteria it used to determine the appropriate grades for its staff positions. The request required disclosure of information about the Council's application of the Hay job evaluation scheme. The Council withheld the requested information under section 43 of the Act on the grounds that release would prejudice the commercial interests of the Hay Group.

The Commissioner decided that the information should be released. He took account of the fact that the Hay Group did not object to the information being disclosed and its value was limited to

competitors without training from Hay. In any event it was in the public interest to disclose such information to allow individuals to understand decisions which affect their lives and to challenge them. Disclosure would also allow people to see the integrity of the decision making process.

[View PDF of Decision Notice FS50078603](#)

AND FINALLY, Premium Bonds. In a tribunal decision dated 5th June:

[Mr L Meunier v Information Commissioner and National Savings and Investments](#) (5 June 2007)

The complainant requested all information about the declared Premium Bond Winners for November and December 2004 and January 2005.

The Tribunal was satisfied that the information requested insofar as it identifies a Premium Bond winner or holder, had to be kept confidential by virtue of The Premium Savings Bond Regulations 1972, SI 1972 No 765 and was therefore exempt from disclosure under section 44 of the Act.

Furthermore, the costs of retrieving the remainder of the information would exceed the appropriate costs limit

Sadly we will never know who won the premium bond prizes for November and December 2004 and January 2005. All I know is that it wasn't me.

That concludes this month's podcast.

This podcast was brought to you by me Ibrahim Hasan. I specialise in all aspects of information rights law particularly Freedom of Information, Data Protection and Surveillance Law. My clients include local authorities, the NHS and government agencies. If you would like specific advice or training on any of your information law issues please do not hesitate to contact me.

Please continue to let me have your feedback. The scripts for all previous podcasts with clickable links are available on my website.

If you would like a copy of this month's script please contact me via my website: www.informationlaw.org.uk Until the next time – Goodbye.

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For more information see www.informationlaw.org.uk

Email: ih@informationlaw.org.uk