

## **Freedom of Information Podcast** **September 2006**

### **WELCOME**

Ladies and Gentlemen. Welcome to this first Freedom of Information pod cast.

My name is Ibrahim Hasan.

I am a solicitor specialising in all aspects on information rights law particularly Freedom of Information and Data Protection.

I am also a consultant with IBA Solicitors and a director of Act Now Training.

You're listening to the first of what will hopefully become a monthly pod cast program designed to bring busy public sector practitioners up to date with the latest developments in Freedom of Information law. In particular I shall be discussing the past month's decisions from the Information Commissioners Office and the Information Tribunal.

### **Introduction**

The Freedom of Information Act 2000 continues to have a big impact on all aspects of the public sector. Lots of interesting decisions have been published in the last few months. In the next few minutes I am going to discuss what I believe are the most notable.

Let's start off with decisions by the Information Tribunal.

### **Mr G Marlow v Information Commissioner was decided on 31 August 2006.**

The Information Tribunal had to decide whether a local authority "held" information for the purposes of the Act which was contained in Butterworth's Direct. Lawyers will know that this is a subscription based online database of statutory materials.

The Tribunal ruled that any information selected, downloaded and saved on the council's computer system was clearly held as well as information which had printed off in hard copy.

As to other information on the database it depended on the terms of the contract between the Council and Butterworth's and the technical means by which the council accessed the data base.

This is an interesting decision which may have implications for legal departments across the country. I suggest that listeners carefully read it and take advice from their IT department as to how far it applied to them.

There are some other Tribunal decisions discussing whether information is held for the purposes of the Act. These include:

Mr R Bustin v The Information Commissioner (16<sup>th</sup> Dec 2005)

And

Mr P Harper v The Information Commissioner (15 November 2005)

It's fair to say that one of the biggest categories for requests under the Freedom of Information Act is third party personal data. There is an absolute exemption under section 40 for personal data where disclosure would breach one of the data protection principles.

**In the case of A v Information Commissioner (11 July 2006)**

The Tribunal ruled that it would be unfair under the First Data protection principle to disclose the names of teachers who were mentioned in a letter by a head teacher to Powys Council asking for additional funding to support a child.

The Tribunal decided that it would be unfair to the teachers and this outweighed any perceived unfairness to the child.

Finally in this section I want to mention the Tribunal decision in:

**Kirkaldie v ICO: 4<sup>th</sup> July 2006**

The appellant requested the legal advice sought by Thanet District Council regarding the night flying policy at Kent International Airport. Amongst other things, the Tribunal ruled that the request should have been considered under EIR as clearly the information related to the elements of the environment and was also about noise. This comes under the definition of environmental information under the Regulations.

This decision shows the importance of examining each request carefully and not just assuming its FOI just because FOI is mentioned by the applicant

That concludes the section of this pod cast on Tribunal decisions. You can read more about these decisions on the Information Tribunals Website ([www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk))

## **LET'S MOVE ONTO RECENT DECISION MADE BY THE INFORMATION COMMISSIONER.**

On 13<sup>th</sup> September ICO ruled that against **Westminster City Council** when it treated a request for information related to a possible change in planning use as being under the Freedom of Information Act. The Commissioner was of the opinion that the information was of a predominantly environmental nature and that the request should have been dealt with under the Environmental Information Regulations.

[View PDF of Decision Notice FER01020787](#)

It seems, from this and other similar decisions, that the Commissioner has now taken the decision that most information about planning should be treated under the EIR regime rather than FOI. This represents a departure from his previous position which advised that each case should be examined on its particular facts

The most interesting decision in September involved the **House of Commons**. **Which refused to release the names and salaries of MPs staff**

On 4<sup>th</sup> September 2006, The Information Commissioner ruled that disclosing the names of MPs staff did not violate the Data Protection Act, but he was powerless to order disclosure after the Speaker of the House issued a certificate claiming publication was 'prejudicial to the effective conduct of public affairs **pursuant to section 36 of the Act**.

[View PDF of Decision Notice FS50073128](#)

This is quite a surprising approach by the House of Commons, especially considering the many other Commissioners' decisions which have ruled that disclosure of the staff details, salaries and expenses was in keeping with the Act.

Listeners can read the article on website examining some these decisions.

Another big target for FOI requests is commercial and financial information. On 11/09/2006 **the Commissioner ruled in favour of The Welsh Development Agency when** the complainant requested information relating to a proposed town centre redevelopment project.

The Agency refused to release it, citing the exemption at section 43(2) of the Act. It argued that disclosure would prejudice the commercial interests of the private sector developers bringing forward the project and of the public authority itself, and that the public interest in maintaining the exemption outweighed the public interest in disclosure.

The Commissioner reviewed the information withheld and agreed with the Agency.

[View PDF of Decision Notice FS50097376](#)

I have done a couple of articles examining section 43 and the related section 41 on breach of confidence. This can be downloaded from my website [www.informationlaw.org.uk](http://www.informationlaw.org.uk)

That's the end of our discussion on the Commissioners' decisions.

Finally let me mention some useful resources which will assist readers in the area of the Freedom of Information.

There is the excellent FOI Blog produced by Steve Wood Of Liverpool John Moores University. This can be found at <http://foia.blogspot.com/>

## **FOI JOURNAL**

The August edition of Open Government, the Freedom of Information Journal, is now available online [www.opengovjournal.org](http://www.opengovjournal.org). I have done an article for it examining the Commissioners' decisions on access to personal information.

## **DCA JOURNAL**

Issue three and four of the DCA's FOI journal has also just been published. You can read this at [www.foi.gov.uk](http://www.foi.gov.uk)

Don't forget Act Now Training is also running a workshop series and a major conference where these decisions will be discussed in detail. It also publishes a free newsletter covering information law and records management.

Full details at [www.actnow.org.uk](http://www.actnow.org.uk)

## **CONCLUSION**

That concludes my first podcast. I hope you enjoyed it as much as I did making it. Please do let me have your feedback. If you would like a copy of the script please contact me via my website

[www.informationlaw.org.uk](http://www.informationlaw.org.uk)

Until the next time – Goodbye.