Ibrahim Hasan, of IBA Solicitors and Act Now Training, examines recent decisions under the Freedom of Information Act 2000

There have been some interesting decisions of the Information Commissioner and the Tribunal over "the Summer" under the Freedom of Information Act (FOI). These will be of particular interest to public sector lawyers.

On the 10th May 2007, in Mr C P England and London Borough of Bexley v Information Commissioner, the Information Tribunal reviewed the decision of the Information Commissioner to order Bexley Council 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 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 the section 31 exemption (crime prevention/detection) 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.

Does FOI require the names of staff to be disclosed? This issue is often debated amongst public sector lawyers. A recent Tribunal decision dated 20th July 2007 (Ministry of Defence v Information Commissioner and Rob Evans) clarifies the situation. It involves a request made by a journalist for a staff directory which included the names and contact details of individuals working for the Defence Exports Services Organisation (DESO).

In summary, the Tribunal ruled that public authorities could only withhold the names of staff who are particularly junior, not immediately responsible for the requested information and as long as their name is not already available elsewhere (or would be expected to be through their performing a public-facing duty). Names can also be withheld if there is a clear and demonstrable threat to an individual's health and safety.

It is now generally accepted that information about expenses claimed by public sector employees and public officials will have to be disclosed under FOI. There have been a number of decisions requiring disclosure of MP's expenses including one by the Information Tribunal (see The Corporate Officer of The House of Commons v Information Commissioner and Norman Baker (16th January 2007)). Clearly the public have a right to know how MPs 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.

In three decisions, dated 13th June 2007, involving the House of Commons, the 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 fully itemised details of expenditure on the running of MPs' private households. To do so would invade their privacy and that of their families.

This issue has been examined further in a Tribunal decision dated 9th August 2007. The Corporate Officer of the House of Commons v the Information Commissioner concerned a decision by the Commissioner to order disclosure of a breakdown of Anne Moffat MP's travel expenses. The requests went beyond the previous Tribunal ruling (see above), in that the complainant required six further categories of disclosures, including spouse's expenses, mileage for car travel, number and cost of taxi journeys etc. The Tribunal ruled that such information should be disclosed.

On a related theme, two recent Commissioner decisions concerned requests for details of the retirement packages of former directors. Calderdale Council (16th May 2007) and City of York Council (15th May 2007) both refused to disclose the information, citing the exemption under section 40 (personal data). The Commissioner agreed that the disclosure of personal data would be unfair to the individuals and consequently a breach of the Data Protection Principles.

In both cases the Commissioner took account of the seniority of the persons involved but ruled that they still had a right to privacy. These decisions are not consistent with other Commissioner decisions including one involving Corby Council (dated 25th August 2005) 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? 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 were paid during their employment but also upon retirement.

Many local authorities have been, or are currently going, through the Single Status and job evaluation programs. 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 information to enable them to challenge the decisions.

In a decision involving the London Borough of Southwark (5th June 2007), 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.

A similar decision involves East Hampshire District Council (4th July 2007), where the Council withheld information concerning the Hay job evaluation process under section 36 (prejudice to the effective conduct of public affairs). The Commissioner decided that the exemption was not engaged and the information should be released.

And finally**,** in a Tribunal a recent decision (5th June 2007), Mr L Meunier v Information Commissioner and National Savings and Investments, 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 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, it seems 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!

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