



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2011/0036

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50286465

Dated: 15 December 2010

Appellant: GREG MUTTITT

First Respondent: INFORMATION COMMISSIONER

Second Respondent: THE CABINET OFFICE

**DETERMINATION OF SECOND RESPONDENT'S APPLICATION FOR PERMISSION
TO APPEAL FROM THE FIRST-TIER TRIBUNAL DECISION DATED 31 JANUARY
2012**

1. Permission is refused for the reasons set out below.
2. Paragraph 5 of the application does not accurately reflect the Tribunal's reasoning.
3. There was no evidence adduced before the Tribunal as to any explicit "terms" of confidentiality upon which the disputed information, in so far as it was obtained from another State, was so obtained: see the first part of FOIA s27(3). It was therefore necessary to draw inferences from the evidence as to the reasonable expectations of the States in question in relation to confidentiality: see the second part of s27(3).
4. The Tribunal inferred from the evidence that the expectation relevant to the present case was that information would be treated as confidential while it remained sensitive. The reasons for this conclusion are set out in the

decision. They included the Tribunal's negative assessment of much of Mr Miller's evidence.

5. Contrary to paragraph 9 of the application, the Tribunal did not conflate confidentiality with subject matter.
6. Paragraphs 10-11 of the application are overstated and are without merit. On the Tribunal's view of the evidence they are contradicted by the release of information which was not in dispute on the appeal. Paragraph 12 fails to take into account that the harm, that the Cabinet Office alleged would flow from any release of information originally obtained in confidence from heads of State, involved that the UK would be seen as untrustworthily flouting diplomatic conventions as to the handling of such information. Since some such information was released, the Tribunal was entitled to draw from that and other evidence an inference concerning the nature of such conventions as to confidentiality, and was not bound to proceed on the basis of the reasoning of the justification for release put forward by the Cabinet Office.
7. Given the above, paragraphs 14-15 do not add anything material, amounting merely to disagreement with the Tribunal's assessment of the evidence.
8. In the circumstances I do not consider that the appeal on the ground of errors of law has a reasonable prospect of success. Permission is therefore refused.

Andrew Bartlett QC

Tribunal Judge

29 February 2012